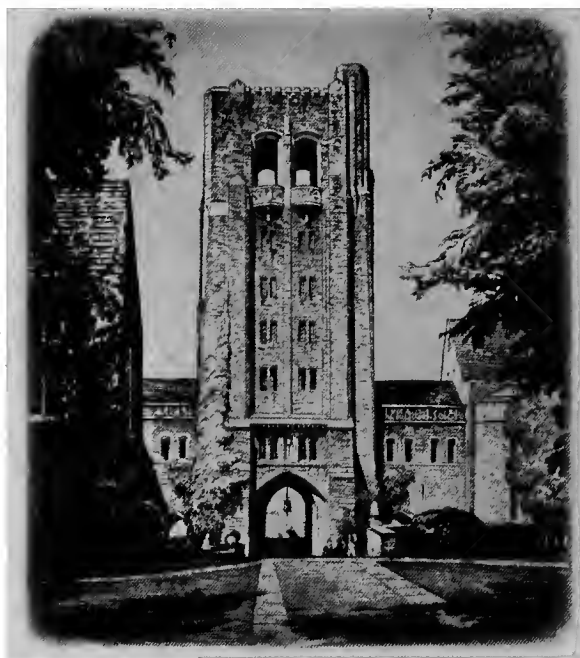




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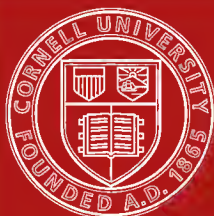
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Mr Alfred Smith

1 Stone Bldgs



PETITIONS  
IN  
CHANCERY AND LUNACY.



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THE  
LAW AND PRACTICE  
RELATING TO  
**P**etitions  
IN  
**C**hancery and **L**unacy.

*WITH AN APPENDIX*  
OF  
**F**orms and **P**recedents.

BY  
SYDNEY E. WILLIAMS,  
OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW.

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## PREFACE.

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ALTHOUGH the jurisdiction by Petition has been gradually extended until it now forms an important part of Chancery procedure, no separate treatise on this branch of practice has yet been published. It has been thought, therefore, that the present work may prove of use to the Profession. The aim of the author has been to collect and arrange the various statutes and cases relating to those petitions which may be presented in the Chancery Division and in Lunacy; and, as such a collection, the work may claim to be fairly exhaustive. The author has further endeavoured to show when petitions will lie, what should be their form, and what the practice respecting them.

No claim can be made to a strictly logical or scientific arrangement of the subject, but it will be seen that the various petitions have been treated, and, to some extent, classified, under the following heads : — Petitions dealing with Funds in Court

(chaps. 2-9); Petitions relating to Leases and Sales (chaps. 10-16); Petitions relating to Companies (chaps. 17-21); Petitions relating to Solicitors (chaps. 22-25); Petitions relating to Infants (chaps. 26-29); Petitions relating to Charities (chap. 30); Petitions relating to Trustees (chaps. 31, 32); Petitions relating to Lunatics (chaps. 33-39); Miscellaneous Special Petitions (chaps. 40-47); Petitions of Course (chap. 48).

An Appendix of Forms and Precedents has been added for the convenience of the draftsman.

The author desires to acknowledge the great assistance he has derived from Daniell's "Chancery Practice," Seton on Decrees, Mr. Morgan's "Chancery Acts and Orders," and Mr. Buckley's "Companies Acts."

S. E. W.

4, NEW SQUARE, LINCOLN'S INN,

*February, 1880.*

# CONTENTS.

---

|                             | PAGE |
|-----------------------------|------|
| TABLE OF CASES . . . . .    | xiii |
| TABLE OF STATUTES . . . . . | xxxi |

---

## CHAPTER I.

|                               |   |
|-------------------------------|---|
| PETITIONS GENERALLY . . . . . | 1 |
|-------------------------------|---|

## CHAPTER II.

|                                 |    |
|---------------------------------|----|
| PAYMENT OUT GENERALLY . . . . . | 18 |
|---------------------------------|----|

## CHAPTER III.

|                              |    |
|------------------------------|----|
| TRUSTEE RELIEF ACT . . . . . | 34 |
|------------------------------|----|

## CHAPTER IV.

|                           |    |
|---------------------------|----|
| LEGACY DUTY ACT . . . . . | 45 |
|---------------------------|----|

## CHAPTER V.

|                                  |    |
|----------------------------------|----|
| PARLIAMENTARY DEPOSITS . . . . . | 47 |
|----------------------------------|----|

## CHAPTER VI.

|                                   |    |
|-----------------------------------|----|
| NATIONAL DEBT ACT, 1870 . . . . . | 54 |
|-----------------------------------|----|

## CHAPTER VII.

|                                                 |    |
|-------------------------------------------------|----|
| LANDS CLAUSES CONSOLIDATION ACT, 1845 . . . . . | 57 |
|-------------------------------------------------|----|

## CHAPTER VIII.

PAGE

91

DEFENCE ACTS . . . . .

## CHAPTER IX.

INVESTMENT (CASH UNDER CONTROL OF THE COURT) . . . . . 93

## CHAPTER X.

SETTLED ESTATES ACT, 1877 . . . . . 96

## CHAPTER XI.

PROPERTY LAW AMENDMENT ACT . . . . . 136

## CHAPTER XII.

CONFIRMATION OF SALES . . . . . 140

## CHAPTER XIII.

LAND TAX REDEMPTION ACTS . . . . . 143

## CHAPTER XIV.

FINES AND RECOVERIES ABOLITION ACT . . . . . 146

## CHAPTER XV.

JUDGMENT DEBTORS ACT . . . . . 148

## CHAPTER XVI.

ECCLESIASTICAL LEASES . . . . . 151

## CHAPTER XVII.

WINDING-UP PETITIONS . . . . . 153

## CHAPTER XVIII.

REDUCTION OF CAPITAL . . . . . 189



# CONTENTS.

ix

## CHAPTER XIX.

|                                             |             |
|---------------------------------------------|-------------|
| JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870 | PAGE<br>198 |
|---------------------------------------------|-------------|

## CHAPTER XX.

|                             |     |
|-----------------------------|-----|
| RAILWAY COMPANIES ACT, 1867 | 201 |
|-----------------------------|-----|

## CHAPTER XXI.

|                               |     |
|-------------------------------|-----|
| LIFE ASSURANCE COMPANIES ACTS | 206 |
|-------------------------------|-----|

## CHAPTER XXII.

|                              |     |
|------------------------------|-----|
| SOLICITOR'S CHARGE FOR COSTS | 209 |
|------------------------------|-----|

## CHAPTER XXIII.

|                            |     |
|----------------------------|-----|
| TAXATION OF BILLS OF COSTS | 213 |
|----------------------------|-----|

## CHAPTER XXIV.

|                        |     |
|------------------------|-----|
| AGREEMENTS AS TO COSTS | 217 |
|------------------------|-----|

## CHAPTER XXV.

|                     |     |
|---------------------|-----|
| CHANGE OF SOLICITOR | 221 |
|---------------------|-----|

## CHAPTER XXVI.

|                              |     |
|------------------------------|-----|
| CUSTODY OF INFANTS ACT, 1873 | 224 |
|------------------------------|-----|

## CHAPTER XXVII.

|                         |     |
|-------------------------|-----|
| INFANTS SETTLEMENTS ACT | 227 |
|-------------------------|-----|

## CHAPTER XXVIII.

|                            |     |
|----------------------------|-----|
| MARRIAGE OF WARDS OF COURT | 230 |
|----------------------------|-----|

## CHAPTER XXIX.

|              |     |
|--------------|-----|
| MARRIAGE ACT | 235 |
|--------------|-----|

## CHAPTER XXX.

|                                    |             |
|------------------------------------|-------------|
| SIR SAMUEL ROMILLY'S ACT . . . . . | PAGE<br>236 |
|------------------------------------|-------------|

## CHAPTER XXXI.

|                                    |     |
|------------------------------------|-----|
| TRUSTEE ACTS, 1850, 1852 . . . . . | 243 |
|------------------------------------|-----|

## CHAPTER XXXII.

|                                               |     |
|-----------------------------------------------|-----|
| PETITION FOR ADVICE AND DIRECTION " . . . . . | 265 |
|-----------------------------------------------|-----|

## CHAPTER XXXIII.

|                                         |     |
|-----------------------------------------|-----|
| PETITION FOR INQUIRY (LUNACY) . . . . . | 269 |
|-----------------------------------------|-----|

## CHAPTER XXXIV.

|                                   |     |
|-----------------------------------|-----|
| LEAVE TO ATTEND INQUIRY . . . . . | 274 |
|-----------------------------------|-----|

## CHAPTER XXXV.

|                             |     |
|-----------------------------|-----|
| LEAVE TO TRAVERSE . . . . . | 275 |
|-----------------------------|-----|

## CHAPTER XXXVI.

|                                           |     |
|-------------------------------------------|-----|
| CONFIRMATION OF MASTER'S REPORT . . . . . | 278 |
|-------------------------------------------|-----|

## CHAPTER XXXVII.

|                       |     |
|-----------------------|-----|
| SUPERSEDEAS . . . . . | 281 |
|-----------------------|-----|

## CHAPTER XXXVIII.

|                                        |     |
|----------------------------------------|-----|
| PETITION ON DEATH OF LUNATIC . . . . . | 285 |
|----------------------------------------|-----|

## CHAPTER XXXIX.

|                                              |     |
|----------------------------------------------|-----|
| SMALL PROPERTIES OF INSANE PERSONS . . . . . | 287 |
|----------------------------------------------|-----|

## CHAPTER XL.

|                                        |     |
|----------------------------------------|-----|
| PETITIONS OF RIGHT ACT, 1860 . . . . . | 290 |
|----------------------------------------|-----|

# CONTENTS.

xi

## CHAPTER XLI.

|                          |             |
|--------------------------|-------------|
| CHARGING ORDER . . . . . | PAGE<br>292 |
|--------------------------|-------------|

## CHAPTER XLII.

|                                    |     |
|------------------------------------|-----|
| MARRIED WOMEN'S PROPERTY . . . . . | 296 |
|------------------------------------|-----|

## CHAPTER XLIII.

|                      |     |
|----------------------|-----|
| COMPROMISE . . . . . | 299 |
|----------------------|-----|

## CHAPTER XLIV.

|                                          |     |
|------------------------------------------|-----|
| DECLARATION OF TITLE ACT, 1862 . . . . . | 301 |
|------------------------------------------|-----|

## CHAPTER XLV.

|                                                        |     |
|--------------------------------------------------------|-----|
| INVESTMENT ON REAL SECURITIES IN IRELAND ACT . . . . . | 303 |
|--------------------------------------------------------|-----|

## CHAPTER XLVI.

|                     |     |
|---------------------|-----|
| RECEIVERS . . . . . | 304 |
|---------------------|-----|

## CHAPTER XLVII.

|                              |     |
|------------------------------|-----|
| OBSOLETE PETITIONS . . . . . | 306 |
|------------------------------|-----|

## CHAPTER XLVIII.

|                               |     |
|-------------------------------|-----|
| PETITIONS OF COURSE . . . . . | 308 |
|-------------------------------|-----|

---

|                             |     |
|-----------------------------|-----|
| APPENDIX OF FORMS . . . . . | 315 |
|-----------------------------|-----|

|                 |     |
|-----------------|-----|
| INDEX . . . . . | 371 |
|-----------------|-----|



## TABLE OF CASES.

### A.

ABBOT, *Re*, 41, 42  
 Abby *v.* Gilford, 21  
 Aberystwith Rly. Co., *Re*, 49  
 Abraham *v.* Newcombe, 22  
 Accidental and Marine Ins. Co., *Re*, 171, 181  
 Ackland, *Re*, 55  
 Adair, *Re*, 93, 107  
 Adams, *Re* (W. N. 1871, 159), 82, 83  
     — (17 L. T. N. S. 641), 94  
     — (9 Ch. D. 116), 108  
     — (17 W. R. 582), 151  
     — (12 Ch. D. 634), 252  
     — (9 L. T. N. S. 626), 287  
 Adanson Fibre Co., 163  
 Adey *v.* Arnold, 232  
 Agar-Ellis, *Re*, 225  
 Albert Average Assoc., 164  
     — Life Ass., 198  
 Albion Bank, 179, 184  
 Allason, *Re*, 24  
 Allen, *Re*, 35  
     — *v.* McPherson, 311  
 Alsager (Incumbent of), *Exp.*, 81  
 Andrews, *Re*, 107  
     — *v.* Walton, 11  
 Angelo, *Re*, 247  
 Anglo-Australian Ass. Co., 154  
     — Danish, &c., Co., 176  
     — Egyptian Navigation Co., 158, 184  
     — Greek Co., 11  
     — — Steam Co., 158  
     — Italian Bank *v.* Davies, 148  
     — Mexican Mint Co., 155  
 Anon. (9 Ha. App. 27), 7  
     — (3 Jur. N. S. 839), 22, 30  
     — (5 Jur. N. S. 385), 28  
     — (17 Jur. 327), 4  
     — (18 Jur. 770), 7  
 Anstie, *Re*, 269, 272  
 Archer *v.* Dowsing, 24

Arden (Lord), *Re*, 58  
 Armitage *v.* Askham, 86  
 Armston, *Re*, 43  
 Armstrong, *Re*, 253  
 Arrowsmith, *Re* (4 Jur. N. S. 1123), 243, 244  
     — (6 W. R. 642), 257  
 Ashley *v.* Taylor, 309  
 Ashmead, *Re*, 55, 56  
 Ashton, *Re*, 238  
 Askew *v.* Millington, 300  
     — *v.* Woodhead, 73, 85, 86  
 Aston *v.* Meredith, 124  
 Atkins, *Re*, 10, 11  
     — *v.* Cooke, 186  
 Atkinson, *Re*, 216  
 Attorney-General *v.* Akers, 235  
     — — *v.* Brickdale, 26  
     — — *v.* Bristol, 237  
     — — *v.* Christ Ch., 106  
     — — *v.* Clare Hall, 238  
     — — *v.* Clements, 235  
     — — *v.* Devon, 237, 239, 240  
     — — *v.* East Retford, 237  
     — — *v.* Green, 239  
     — — *v.* Parnter, 282  
     — — *v.* Read, 235  
     — — *v.* Rochester, 82, 86  
     — — *v.* Stamford, 237, 240  
     — — *v.* Ward, 255  
 Aubrey, *Re*, 72  
 Audley Hall Co., 185  
 Austen, *Re*, 255  
 Austin *v.* Amburst, 69  
 Avery, *Re*, 55  
 Ayles *v.* Cox, 248, 258, 260, 263

### B.

BACHE, *Re*, 252  
 Back, *Exp.*, 58  
 Badcock, *Re*, 262  
 Bagnall *v.* Carlton, 294

- Bagot, *Re* (10 W. R. 607), 85  
     — (14 W. R. 471), 79  
 Baile *v.* Baile, 210  
 Bailey *v.* Birchall, 211  
     — *v.* Collett, 29  
 Baillie, *Re*, 14, 44  
 Baker, *Re*, 29  
 Baldwin, *Re*, 31  
 Ballard *v.* Catlings, 311  
 Banbury, *Re*, 121  
 Bank of London Ass., 161  
     — *Montreal v.* Cameron, 176  
 Barber, *Re*, 38  
 Bariatinski, *Re*, 272, 274, 279  
 Barker, *Re*, 252  
 Barned's Banking Co., 158  
 Barrett, *Exp.*, 71  
 Barrington, *Re* (27 Beav. 272), 7  
     — (1 J. & H. 142), 266  
 Barry Rly. Co., *Re*, 51  
 Bartholomew, *Re*, 298  
 Bartlett, *Exp.*, 225  
 Barton *v.* Latour, 33  
 Basingstoke Canal, 161  
 Basnett *v.* Moxon, 245  
 Bateman, *Re* (13 W. R. 513), 121  
     — (21 L. J. Ch. 451), 71  
 Bathurst *v.* Murray, 233  
 Battel (Dean of), *Exp.*, 74  
 Battell, *Re*, 40  
 Battersby, *Re* (10 Ch. D. 228), 38, 39  
     — (16 Jur. 900), 261  
 Batty, *Re*, 60  
 Baugham, *Exp.*, 39  
 Baxter, *Re*, 260  
 Beamish, *Re*, 55  
 Beard *v.* Travers, 233  
 Beaty *v.* Curson, 40, 41, 42, 43  
 Beauclerk, *Re*, 39  
 Beanfof, *Re*, 74, 75  
 Beaujolais Wine Co., 159  
 Beaumont, *Re*, 141  
 Beaumont *v.* Carter, 22  
 Beauvoir, *Re*, 80  
 Becke, *Re*, 213  
 Beckett *v.* Buckley, 149  
 Beddoes, *Exp.*, 63  
 Bedell, *Re*, 269  
 Bedford, *Re*, 239, 242  
 Bedwas Coal Co., 179  
 Befford, *Re*, 37, 40  
 Beioley *v.* Carter, 96, 97, 116, 117, 128  
 Belfast Water Commissioners, *Re*, 66  
 Bell, *Re*, 16, 216  
 Belt, *Re*, 23, 125  
 Bendyshe, *Re* (5 W. R. 816), 38  
     — (3 Jur. N. S. 727), 134  
 Bentley *v.* Craven, 18  
 Benton, *Re*, 43  
 Berkeley, *Re*, 72  
 Berkhamstead Gram. Sch., *Exp.*, 237, 238  
 Berkley, *Re*, 256  
 Berlin Abattoir Co., 182  
 Besant, *Re*, 224, 226  
 Bessemer Steel Co., 199  
 Bethlehem Hos., *Re*, 80  
 Betty *v.* London, &c., 88  
 Bicester (Churchwardens of), *Exp.*, 62  
 Bicknell, *Re*, 121  
 Biddulph, *Re*, 25, 37  
 Biggs, *Re*, 34  
 Bignold, *Re* (9 Beav. 269), 216  
     — (L. R. 7 Ch. 223), 253  
     — *v.* Springfield, 237  
 Birch, *Re* (2 K. & J. 369), 43  
     — (10 Jur. N. S. 673), 73  
     — *v.* Cropper, 255  
 Birchall *v.* Pugin, 211  
 Bird, *Re*, 35  
 Birkett, *Re*, 41, 42  
 Birmingham, &c., *Re*, 89  
 Bishop *v.* Bishop, 94  
 Bishop's Waltham Rly. Co., 149  
 Bishton, *Re*, 55  
 Blackmore, *Re*, 283  
 Blackwood, *Re*, 6  
 Blanchard, *Re*, 252, 259  
 Blewitt, *Re*, 146, 147  
 Bligh, *Re*, 25, 306  
 Blomfield, *Re*, 61  
 Bloye, *Re*, 35  
 Blunt *v.* Heslop, 213  
 Blyth, *Re*, 62, 79  
 Boddington *v.* Woodley, 311  
 Bogg *v.* Midland Rly., 77  
 Bolton, *Re*, 38, 39  
     — *Estates, Re*, 124  
     — *Act, Re*, 2  
     — *Loan Soc.*, 164  
     — *Tramways Act*, 48  
 Bonelli's Telegraph Co., 6  
 Bonfield *v.* Grant, 7  
 Bonser *v.* Bradshaw, 211  
 Boston, *Exp.*, 48  
 Boughton, *Re*, 117  
 Bourke, *Re*, 258, 259  
 Bouts, *Exp.*, 55  
 Bouverie, *Re*, 80, 82  
 Bowen *v.* Evans, 128  
 Bowes, *Re* (10 Jur. N. S. 817), 84  
     — (12 W. R. 929), 21, 59, 84  
 Box, *Re* (1 H. & M. 552), 266  
     — (11 W. R. 304), 266  
 Boyce, *Re* (15 W. R. 827), 94, 95  
     — (4 D. J. & S. 205), 247, 252

- Boycott, *Re*, 255  
 Boyd, *Re* (1 Ch. D. 12), 11  
 — (Ir. R. 8 Eq. 76), 122, 125  
 Brackenbury, *Re*, 255, 263  
 Bradford Navigation Co. (L. R. 10 Eq. 331), 161  
 — — (L. R. 5 Ch. 600), 180  
 Bradford Tramways, *Re*, 52  
 Bradley v. Munton, 263  
 Bradshaw, *Exp.*, 79  
 — v. Fane, 59  
 Brailey, *Re*, 85  
 Brain, *Re*, 290, 292  
 Braithwaite, *Exp.*, 79  
 Brompton Rly. Co., *Re*, 51  
 Brandling v. Humble, 28  
 Brandon, *Re* (2 Dr. & S. 162), 82, 83  
 — (W. N. 1879, 215), 306  
 — v. Brandon, 73, 76, 77  
 Branmer, *Re*, 82  
 Brasher, *Re*, 65  
 Braye, *Re*, 59, 83  
 Brealey, *Re*, 134  
 Bredicot (Vicar of), *Exp.*, 71  
 Breed, *Re*, 266  
 Brent, *Re*, 27, 62  
 Brentnall, *Re*, 256  
 Brewer, *Re*, 65, 70  
 Brewood Rly. Co., *Re*, 53  
 Briant v. Dennett, 20  
 Bridport Brewery Co., 160  
 Brighton Club Co., 155  
 — Hotel Co., 157, 179  
 Brignall v. Whitehead, 16  
 Briscoe, *Re*, 83  
 Bristed v. Wilkins, 295  
 Bristol, &c., *Re*, 59  
 — School, *Re*, 82  
 — and Somerset Rly., 204, 205  
 British Alliance Corp. (W. N. 1877, 261), 165, 169  
 — — — (9 Ch. D. 635), 158, 165, 178, 186  
 — and Foreign Gas Co., 14, 156, 181, 182  
 — Imperial Ass. Co., 166  
 — — Corp., 6  
 Britten v. Britten, 30  
 Broadwood, *Re* (8 L. T. N. S. 632), 35  
 — (1 Ch. D. 438), 69  
 — (L. R. 7 Ch. 323), 132  
 Broke, *Exp.*, 85  
 Brompton Waterworks, *Exp.*, 48  
 Brooke v. Mostyn, 299  
 Brookes v. Furton, 16  
 Brooking, *Re*, 83  
 Brookman, *Re* (1 Mac. & G. 199), 7  
 Brookman, *Re* (1 H. & T. 435), 272  
 Brown, *Re* (13 W. R. 677), 25  
 — (9 Jur. N. S. 349), 141  
 — (L. R. 4 Eq. 464), 214  
 Brown v. Fenwick, 78  
 — v. Keehle, 155, 156  
 — v. Pennefather, 122  
 — v. Trotman, 210  
 Browne, *Re*, 64  
 Browse, *Re*, 58  
 Bryan v. Mansion, 32  
 Bryant, *Re*, 35  
 Buck, *Exp.*, 88  
 Buckingham, *Re*, 65  
 — Rly. Co., *Re*, 66  
 Buckley, *Re*, 29  
 Bulkeley v. Eglinton, 255  
 — v. Schutz, 163  
 Bulley v. Bulley, 211  
 Bampton, *Exp.*, 282  
 Bunnett, *Re* (1 Jur. N. S. 921), 10  
 — (10 Jur. N. S. 1098), 266, 267  
 Burdin, *Re*, 97, 98  
 Burgess, *Re*, 256  
 Burley, *Re*, 122  
 Burnell, *Re*, 59, 84  
 Burt, *Re*, 262  
 Bute, *Re*, 246  
 Butler, *Re* (L. R. 16 Eq. 479), 69  
 — (L. R. 1 Ch. 607), 285  
 Butlin, *Re*, 298  
 Butterfield, *Re*, 85, 86  
 Bwlch-y-Plwm Co., 158  
 Byam v. Sutton, 28  
 Byron, *Re*, 86

## C.

- C——, *Re*, 273  
 Caddick, *Re*, 60  
 Caerphilly Colliery Co., 159  
 Cakemore, &c., Co., *Re*, 342  
 Calne Rly. Co., 149, 150  
 Cambrian Rly. Co., 204  
 Cambridge (Corp. of), *Exp.*, 63  
 Camel, *Re*, 66  
 Campbell, *Re*, 256  
 Cann, *Re*, 64  
 Cant, *Re*, 85, 86  
 Canterbury (Archbp. of), *Exp.*, 25, 62  
 Capper, *Exp.*, 168  
 Cardiff Coal Co. v. Norton, 155  
 Cardross, *Re*, 266  
 Carlyon v. Truscott, 97  
 Carmarthen, &c., *Exp.*, 89  
 Carmarthenshire, &c., Iron Co., 184  
 Carnarvonshire Slate Co., 183

- Carney, *Re*, 82  
 Carpenter, *Re*, 247  
 Carpmæl v. Profit, 81  
 Carr, *Re*, 100  
 Carr v. Eastabrook, 29  
 Carter v. Sebright, 263  
 Cartwright, *Re*, 10  
 Cater, *Re*, 43  
 Catholic Publishing Co., 155  
 Catlow v. Catlow, 210  
 Cattlin, *Re*, 216  
 Cave, *Exp.*, 87  
 Cawthorne, *Re*, 41, 42  
 Cazneau, *Re*, 37, 43  
 Chamberlain, *Re* (22 Beav. 286), 21, 36  
 — (23 W. R. 852), 98, 117  
 Chambers, *Re*, 102, 106, 109, 122  
 Champneys v. Burland, 148  
 Chaplin, *Re*, 14  
 Chauncey, *Re*, 254  
 Chawner, *Re*, 266  
 Chelsea Waterworks, *Re*, 66  
 Cheltenham, &c., Carriage Co., 172, 177  
 Chennell, *Re*, 44  
 Cheshire, *Re*, 151  
 Cheshunt Coll., *Re*, 64  
 Chilcott, *Re*, 121  
 Chipping Sodbury, *Re*, 238  
 Christchurch (Dean of), *Exp.*, 74, 86  
 Christie v. Ovington, 244  
 Christ's Hosp., *Exp.* (12 W. R. 669), 81  
 — — (L. R. 20 Eq. 605), 81  
 — — (2 H. & M. 166), 86  
 — — (27 W. R. 456), 86  
 Church v. Marsh, 17  
 Churchward v. Reg., 290  
 City and County Bank, 157, 167, 170, 178  
 — Glass Co., 184  
 — of London Ass., 174  
 Clare, *Re*, 270, 273  
 Clark, *Re*, 96, 138  
 — v. Simpson, 14  
 — v. Ward, 256  
 Clarke, *Re* (13 W. R. 401), 23, 70  
 — (10 L. T. N. S. 366), 57  
 — (6 W. R. 812), 57, 19  
 — (8 Sim. 34), 237  
 — *Exp.* (Jac. 589), 285  
 — v. Fenwick, 26  
 — v. Woodward, 31  
 Clay, *Re*, 246  
 Claypole (Rector of), *Exp.*, 66, 67  
 Clements, *Re*, 274  
 Clergy Orphan Corp., *Re*, 265  
 Cleveland (Duke of), *Re* (2 L. T. N. S. 78), 129  
 — — — (1 Dr. & S. 46), 7, 59  
 Cleveland (Duke of), *Re*, (1 Dr. & S. 481), 84, 124  
 — (Duchess of), *Re*, 100  
 Clinton, *Re*, 26, 62  
 Clissold, *Re*, 255  
 Clitheroe, *Re*, 124  
 Clough, *Re*, 114  
 Clutton, *Exp.*, 255, 256  
 — v. Lee, 310  
 Cochrane v. Fearon, 5  
 Cockayne v. Harrison, 210  
 Cockburn v. Peel, 94  
 Codrington, *Re*, 62  
 Cofield, *Exp.*, 58  
 Coghlan's Case, 174  
 Coleman, *Re*, 29  
 Coles v. Benbow, 250, 251  
 Collett v. Collett, 97  
 Collingwood, *Re*, 247  
 Collins, *Re*, 62  
 Collinson v. Collinson, 262  
 Collis, *Re*, 72  
 Colson, *Re*, 38, 39  
 Colyer v. Colyer, 310  
 Commercial Bank of India, 163  
 — Discount Co., 181  
 Conduit v. Soane, 37  
 Consolidated Bank, 183  
 Constantinople Hotels Co., 182  
 Conybeare, *Re*, 255, 256  
 Conyers School, *Re*, 240, 254  
 Cook, *Re*, 267  
 Coombes v. Brookes, 260  
 Cooper, *Exp.* (2 Dr. & S. 312), 86  
 — *Re* (2 K. & J. 256), 37, 43  
 — (W. N. 1873, 87), 265  
 — v. Jones, 247  
 — v. Knox, 16  
 — v. Macdonald, 253  
 Cope, *Re*, 266  
 Corbett, *Re*, 121  
 Cork and Youghal Rly. Co., *Re*, 170  
 Corpus Christi College, *Exp.*, 86  
 Costa Rica v. Erlanger, 186  
 Cotterill, *Re*, 303  
 Cotton, *Re*, 266  
 Coulson, *Re*, 26  
 Coulsting v. Coulsting, 310  
 Courtois, *Re*, 38  
 Coventry (Justices of), 33  
 Covington, *Re*, 42  
 Cowbridge Rly. Co., 149  
 Cox v. Bennett, 234  
 Coyte, *Re*, 65  
 Crabtree, *Re* (L. R. 10 Ch. 203), 114, 119  
 — (14 W. R. 497), 263  
 Craddock, *Re*, 20  
 Crane, *Re*, 58, 73, 84



Craven, *Exp.*, 65  
 Crédit Foncier, 189, 191  
 Creech (Vicar of), *Exp.*, 85  
 Croker, *Re*, 66  
 Crompe, *Re*, 271  
 Cross's Charity, *Re*, 100, 122  
 Croughton, *Re*, 4, 20, 22  
 Crouwe, *Re*, 245, 260  
 Croxton v. May, 24  
 Crump, *Re*, 22  
 Crystal Palace, *Re*, 75, 79  
 Cull, *Re*, 41, 42  
 Cuming, *Re*, 247  
 Cumming, *Re*, 275, 276  
 Cunard, *Re*, 255  
 Cundee, *Re*, 118  
 Currie, *Re*, 248, 251, 257, 285  
 Curtis, *Re* (7 W. R. 474), 225  
 — (Ir. R. 5 Eq. 429), 255  
 — v. Price, 128  
 Cust v. Middleton, 102  
 Cutler, *Re*, 35  
 Cwmsymlog Co., 174

## D.

D'ADHEMAR v. Bertr  nd, 255, 256  
 Dalgleish, *Re*, 244, 246, 247, 253  
 Dalton, *Re* (1 D. M. & G. 265), 35  
 — (6 D. M. & G. 201), 228  
 Dartmouth Rly. Co., *Re*, 25, 49  
 Dashwood, *Exp.*, 79  
 Davenant, *Re*, 62  
 Davenport, *Re*, 254, 256  
 David, *Re*, 214  
 Davidson v. Leslie, 221  
 Davies, *Exp.* (16 Jur. 882), 263  
 — *Re* (3 Mac. & G. 278), 248, 254  
 Davis, *Re* (3 De G. & J. 144), 65  
 — (L. R. 12 Eq. 214), 253, 256  
 — v. Chanter (6 W. R. 416), 247  
 — — (4 Jur. N. S. 272), 251, 253  
 Dawson, *Re* (3 N. R. 397), 253  
 — (6 N. R. 346), 256  
 — v. Newsome (2 Giff. 272), 300  
 — — (8 W. R. 725), 299  
 — v. Thompson, 233  
 De Beaumont, *Exp.*, 29  
 De Beauvoir, *Re*, 80  
 Dee, *Exp.*, 162  
 De Feucheres v. Dawes, 16  
 De la Touche, *Re*, 35  
 Dendy, *Re*, 117  
 Dennis, *Re*, 265, 267  
 Dennison, *Re*, 249  
 Derby Municipal Estates, *Re*, 63

Dereham (Vicar of), *Exp.*, 60  
 Desborough v. Harris, 42  
 De Tabley (Lord), *Re*, 132  
 Devon Rly. Co., *Re*, 206  
 Devonshire, *Re*, 11  
 D'Eyncourt v. Gregory, 98  
 Diamond Fuel Co. (W. N. 1878, 11), 167, 183  
 — — (W. N. 1879, 180), 187  
 Dickinson, *Re*, 255  
 Dickson, *Re* (1 Sim. N. S. 37), 43  
 — (W. N. 1872, 223), 251  
 Dinning v. Henderson, 83  
 Disderi & Co., 180  
 Disney, *Re*, 35  
 Dixon, *Re*, 25  
 — v. Jackson, 65, 81  
 — v. Morley, 36  
 Dodd, *Re*, 80  
 Dodkin v. Brunt, 253  
 Doe v. Radcliffe, 100  
 Domville, *Re*, 39  
 Doncaster Building Soc., 180  
 Donisthorpe, *Re*, 252, 257  
 Donne v. Lewis, 309  
 Doolan v. Midland Rly., 162  
 Dorning, *Re*, 106  
 Douglas v. Douglas, 299  
 Dowling, *Re*, 58, 59, 61, 62, 80, 84, 94  
 Downing v. Picken, 28  
 Drake v. Trefusis, 65, 67, 124  
 Draper, *Re* (9 W. R. 805), 243, 250  
 — (2 W. R. 440), 261  
 Dresser v. Morton, 311  
 Drewe, *Re*, 255  
 Drewery, *Re*, 29  
 Driver, *Re*, 254  
 Duckle, *Exp.*, 60  
 Dummer, *Re*, 67  
 Dunaburg Co., 189  
 Dundas, *Re*, 23  
 Dunn v. Dunn, 312  
 Dunraven Coal Co. (24 W. R. 37), 14  
 — *Re* (10 W. R. 56), 57, 61, 82  
 Dyce Sombre, *Re* (1 Mac. & G. 116), 282  
 — (1 Phil. 436), 283  
 Dylar, *Re*, 81  
 Dynevor Duffryn Co. (W. N. 1878, 199), 11  
 — Dyffryn, &c., Co. (11 Ch. D. 605), 199  
 E.  
 Eady v. Watson, 33  
 Early, *Re*, 271

- East, *Re* (2 W. R. 111), 67  
   — (L. R. 8 Ch. 735), 260  
   — Cambrian Gold Mining Co., 176, 180  
   — Llangynog Co., 185  
   — & West Junction Rly., 204  
 Eastern Counties Rly. v. Tufnell, 87  
 Ecclesall, *Re*, 238  
 Ecclesiastical Commrs., *Exp.* (39 L. J. Ch. 623), 79  
   — — (W. N. 1873, 173), 86  
   — — (13 W. R. 575), 82, 86  
 Eden v. Naish, 300  
   — v. Thompson, 82, 83  
 Edmunds, *Exp.*, 79  
 Edward Sixth Almshouses, *Re*, 59, 60  
 Edwards, *Re*, 297  
   — v. Abrey, 25  
   — v. Harvey, 27  
 Egremont, *Re*, 71  
 Eldridge, *Re*, 214  
 Electric Telegraph of Ireland, 161  
 Elliott, *Re*, 41, 43  
   — v. Remmington, 30  
 Ellis, *Re*, 249, 250  
 Ellison, *Exp.* (2 Y. & C. Ex. 528), 69  
   — *Re* (2 Jur. N. S. 62), 255  
 Elmore, *Re*, 268  
 Elmslie, *Re*, 214  
 Elrington v. Elrington, 31  
 Elsworthy v. Wickstead, 22  
 Emmerson's Case, 172  
 Empire Assurance Corp., 181  
 English, *Re*, 86  
 Equitable Soc. v. Fuller, 95  
 Erskine, *Re*, 42  
 Estate Co. (L. R. 5 Ch. 407), 189  
 Estates Investment Co. (L. R. 8 Eq. 227), 186  
 Etna Insurance Co. (26 W. R. 718), 186  
   — — (Ir. R. 7 Eq. 362), 187  
 Eton College, *Exp.*, 81, 82  
 Eupion Gas Co., 188  
 European Banking Co., 166, 181, 183, 184  
   — Life Ass. (L. R. 9 Eq. 122), 153, 156, 158  
   — — (L. R. 10 Eq. 403), 167  
 Evans, *Re*, (L. R. 7 Ch. 609), 40, 42  
   — (42 L. J. Ch. 357), 68  
   — (2 M. & K. 318), 138  
   — (30 Beav. 232), 266  
 Everton Building Soc., 176  
 Ewart v. Chubb, 30  
 Exmouth Docks Co., 161, 167  
 Eyles v. Ward, 16  
 Eyre, *Re* (4 K. & J. 268), 108  
   — (2 Phil. 367), 214  
   — v. Countess of Shaftesbury, 233  
   — v. Saunders, 98  
  
 F.  
 F —, *Re*, 273  
 Fadelle v. Bernard, 299  
 Fagg, *Re*, 41, 42  
 Faithfull v. Ewen, 212  
 Family Endowment Soc., 161, 162  
 Fanning, *Re*, 266  
 Farington, *Re*, 214  
 Farrant, *Re*, 260  
 Faulder, *Re*, 247  
 Faversham, 26, 68  
 Fell v. Jones, 29  
 Fellows, *Re*, 259, 263  
 Feltham, *Re*, 42  
 Fernyhough v. Naylor, 11  
 Ferrior, *Re*, 285  
 Fiddey, *Re*, 210  
 Field, *Re*, 214, 215  
   — v. Brown, 234  
   — v. Carnarvon Rly., 88  
   — v. Turner, 273  
 Fielden v. Hornby, 22  
 Finch, *Re*, 59, 84  
 Fire Annihilator Co., 159  
 Fisher, *Re*, 246  
   — v. Fisher, 78  
   — v. Coffey, 12  
 Fitzgerald, *Re*, 285  
   — v. Pringle, 303  
 Flack, *Re*, 38  
 Flagstaff Co., 156, 177  
 Flamank, *Exp.*, 76  
 Flemon, *Re*, 62  
 Fletcher, *Exp.*, 40  
 Fliteroft, *Re*, 247  
 Flower, *Exp.*, 78, 88, 90  
 Fluker, *Re*, 214  
 Poligno, *Re*, 43  
 Fooks, *Re*, 89  
 Ford *Re* (L. R. 8 Eq. 309), 99, 102  
   — *Exp.* (5 D. M. & G. 35), 214  
 Forster v. Abraham, 256  
 Fortune Copper Mining Co, 173, 176  
 Fosbury, *Re*, 39  
 Foster, *Re*, 310  
   — v. Dawber, 262

Foster v. Foster, 125  
 Fowey, *Re*, 237  
 Fowles, *Exp.*, 239  
 Fox v. Amburst, 69  
 Foxon v. Gascoigne, 211  
 Foy, *Re*, 62  
 Foyard, *Re*, 35  
 Frank v. Mackay, 298  
 French, *Exp.* (7 Sim. 510), 303  
 — *Re* (L. R. 3 Ch. 317), 280  
 — (L. R. 15 Eq. 63), 265, 267  
 Friendly Soc., *Exp.*, 238  
 Fryer, *Re*, 62  
 Fust, *Re*, 275  
 Futvoye v. Kennard, 259

## G.

GAITSKELL, *Re*, 213  
 Galliers v. Met. Rly. Co., 75  
 Galpine, *Re*, 272  
 Gamston (Rector of), *Exp.*, 66  
 Garden, *Re*, 264  
 Gardner, *Re*, 243, 257  
 — v. Cowles, 139, 249, 250  
 — v. London, &c., 149  
 Garnett v. Bradley, 13, 78  
 Garratt, *Re*, 266  
 Gartside, *Re*, 253  
 Gaskell, *Exp.*, 86  
 Gedye, *Re*, 216  
 General Exchange Bank (4 R. 4 Eq. 138),  
 167, 185  
 — — — (14 L. T. N. S.  
 582), 172  
 — International Co., 184  
 Gibbons v. Kibbey (10 W. R. 55), 22,  
 69  
 — — (7 Jur. N. S. 1293),  
 23  
 Gibson, *Re*, 29  
 Gilbert, *Exp.*, 285  
 — v. Endeau, 300  
 Gill, *Re*, 258  
 Gillett, *Exp.* (3 Madd. 28), 55, 56  
 — *Re* (W. N. 1876, 251), 253  
 Giraud, *Re*, 254  
 Gledstones, *Re*, 34  
 Globe Steel Co., 156  
 Gloucester Charities, *Re*, 254, 258  
 — (Dean of), *Exp.*, 74  
 Glover, *Exp.*, 273, 281  
 Godmanchester School, *Re*, 240  
 Goe, *Re*, 80  
 Gold Co., *Re*, 159, 167, 188  
 Goldsmith v. Goldsmith, 311  
 Gombault, *Re*, 12

Gooch, *Re*, 68  
 Goodwin, *Re*, 93, 107  
 Gordon, *Re* (W. N. 1876, 257), 3  
 — (2 Phil. 242), 282, 283  
 Gore Langton, *Re*, 13, 84, 85  
 Gough v. Bage, 258  
 — v. Herbert, 300  
 Gover v. Stillwell, 33  
 Graham, *Re*, 230  
 Grant, *Re*, 264  
 — v. Grant, 26  
 — v. Holland, 222  
 — v. Yea, 147  
 Gravenor, *Re*, 146, 147  
 Gray, *Re*, 108  
 — v. Paull, 299  
 Graydon, *Re*, 147  
 Great Northern Mining Co., 158  
 — — Rly. Co., *Exp.* (L. R. 9  
 Eq. 274), 48  
 — — — (6 Rail. Ca.  
 738), 69  
 — — — (16 Sim. 169),  
 89  
 — Yeldham, *Re*, 87  
 Greaves, *Re*, 7  
 Green, *Re* (2 Coop. T. L. C. 163), 272  
 — (2 D. F. & J. 121), 267  
 — (6 Jur. N. S. 530), 267  
 — (L. R. 10 Ch. 272), 260  
 — v. Angell, 62, 94  
 Greene, *Re*, 98, 105  
 Greenland, *Re*, 38  
 Greenwood v. Greenwood, 21  
 Gregg, *Re* (L. R. 9 Eq. 137), 215  
 — (23 L. T. N. S. 234), 270  
 Gregson, *Re*, 85  
 Grey v. Jenkins, 98, 127  
 Griffiths v. Griffiths, 222  
 Grimoldby (Rector of), *Exp.*, 66, 67  
 Groom, *Re*, 248  
 Grossett, *Re*, 280  
 Grove, *Re*, 35  
 Grundy v. Buckeridge, 261  
 Guibert, *Re*, 255  
 Guilden Sutton (Incumbent of), *Exp.*, 57,  
 78, 79  
 Gunson v. Simpson, 259  
 Gynn v. Gilbard, 22

## H.

HADLEY, *Re*, 252  
 Hair, *Re*, 214, 215, 216  
 Hakewill, *Exp.*, 225, 311  
 Hall, *Re* (L. R. 9 Eq. 179), 68  
 — (14 Beav. 115), 237, 238

- Hall v. Laver, 211  
 Halliday, *Re* (L. R. 12 Eq. 199), 132  
     — (17 Jur. 56), 224, 225  
 Halsall, *Re*, 214  
 Halsey, *Re*, 60  
 Halstead Charities, *Re*, 84  
 Ham, *Re*, 42  
 Hamer v. Giles, 210  
 Hamilton v. Arrowsmith, 30  
 Hancox v. Spittle, 247, 251  
 Haney, *Re*, 6, 41  
 Hanson, *Re*, 240  
 Harborough, *Exp.*, 79  
 Hardwicke (Earl), *Exp.*, 80  
 Harfold, *Re*, 246, 254, 255, 256  
 Hargreave, *Re*, 99, 109  
 Hargrove & Co., 162, 164  
 Harris, *Re* (8 Jur. N. S. 166), 12  
     — *Exp.* (11 L. J. Bank. 16), 260  
     — *v.* Start, 16  
 Harrison, *Re* (Seton, 516), 247  
     — (22 L. J. Ch. 60), 253  
     — *v.* Borwell, 32  
     — *v.* Smith, 256  
 Harrop, *Re*, 76  
 Hartington (Rector of), *Exp.*, 66  
 Hartland v. Atcherley, 7  
 Hartnall, *Re*, 249  
 Harvey, *Re*, 244  
     — *v.* Clark, 96, 227  
     — *v.* Trenchard, 287  
 Hastie v. Hastie, 205  
 Hattatt, *Re*, 256  
 Hatton v. Haywood, 148, 150  
 Havelock, *Re*, 10  
 Hawke, *Re*, 21, 37, 40  
 Hawkins, *Exp.*, 76  
 Haycock, *Re*, 41, 42, 43  
 Hayes, *Re*, 69  
 Haymes v. Cooper, 212  
 Hayne, *Re*, 86  
 Haynes v. Barton, 83  
 Hayward v. Pile, 152  
 Heaphy, *Re*, 252  
 Hellmann, *Re*, 25  
 Heming, *Re*, 42  
 Hemingway, *Re*, 106  
 Hemsley, *Re* (L. R. 16 Eq. 315), 121  
     — (43 L. J. Ch. 72), 124, 125,  
     127  
 Henchy, *Re*, 99  
 Henniker v. Chafy (35 Beav. 124), 59, 84  
     — (23 Beav. 621), 83  
 Herbert, *Re*, 251  
 Hereford, &c., *Re* (13 W. R. 134), 82  
     — Co. (L. R. 17 Eq.  
     423), 177  
 Heritage, *Re*, 214  
 Herne Bay Waterworks Co. (10 Ch. D.  
     42), 161,  
     167  
     — — — — (W.N. 1878,  
     199), 178  
 Herring v. Clark, 257  
 Hertford v. Suisse, 16  
 Hey, *Re*, 247  
 Hickman v. Upsall, 31  
 Higgs v. Schrader, 210  
 Hill, *Re*, 255  
 Hilliard, *Re*, 124  
 Hinings v. Hinings, 28  
 Hislop v. Wykeham, 10  
 Hitchin, *Re*, 71  
 Hoare, *Re*, 35  
 Hobson, *Re*, 67  
 Hodge, *Re*, 82  
 Hodges, *Re*, 19, 36, 40  
 Hodgson, *Re* (2 Eq. Rep. 1083), 40  
     — (11 Ch. D. 888), 248, 257  
 Hodson, *Re*, 252  
 Hogan, *Re*, 270  
 Holbrook, *Re* (8 W. R. 3), 250  
     — (5 Jur. N. S. 1333), 256  
 Holcombe v. Antrobus, 16  
 Holden, *Re*, 69  
 Hole, *Re*, 110  
 Holland, *Re* (1 Phil. 379), 56  
     — (19 Beav. 314), 213, 214  
     — *v.* Gwynne, 213  
 Hollick, *Exp.*, 59  
 Hollier v. Burne, 152  
 Hollinsworth, *Exp.*, 68, 76  
 Holman, *Re*, 90  
 Holme v. Guy, 26, 68  
 Holmes v. Reg., 290  
 Holt v. Everall, 297  
 Holtbam (Lord), *Re*, 266  
 Holyland, *Exp.*, 282, 283  
 Holywell (Rector of), *Exp.*, 66, 82  
 Home Ass. Ass. (L. R. 12 Eq. 112), 157,  
     186  
     — — (L. R. 12 Eq. 59), 177,  
     178  
 Hooke, *Re*, 117  
 Hooper, *Re*, 266  
 Hop & Malt Co., 154  
 Hopewell v. Barnes, 293  
 Hopkin v. Hopkin, 270  
 Horbury Bridge Coal Co., 157, 183  
 Hore, *Re*, 85  
 Horn, *Re*, 97  
 Horton, *Re*, 121  
 Horwood, *Re*, 68  
 Hoskin, *Re*, 43, 44  
 Hoskins, *Re*, 261  
 Household Insurance Co., 6

How, *Re*, 27  
 Howard, *Re*, 247  
     — *v.* Kay, 55  
 Howson *v.* Trant, 149  
 Hoyle *Re*, 106  
 Hubbard *v.* Hubbard, 251  
 Hue, *Re*, 41  
 Hull, &c., *Re*, 83  
     — & County Bank, 183  
     — & Hornsea Rly. Co., 149, 150  
 Humber Ironworks Co., *Re*, 171, 183, 184  
 Humphrey, *Re*, 252  
 Hungerford, *Re* (1 K. & J. 413), 58, 62  
     — (3 K. & J. 455), 58, 84  
 Hunt *v.* Peacock, 55  
 Huntley *v.* Clutterbuck, 258  
 Hurd *v.* Hurd, 95  
 Hurle, *Re*, 104, 109, 127, 129, 134  
 Hutchinson, *Re* (1 D. & S. 27), 37, 43  
     — (12 Jur. N. S. 244), 103,  
     104  
     — *v.* Stephens, 244  
 Hutley, *Re*, 11

## I.

ILDERTON, *Re*, 214, 216  
 Illman, *Re*, 68  
 Imperial Anglo-German Bank, 162  
     — Bank of China, 159  
 Ingram, *Re*, 94, 95  
 Inns of Court Hotel, 160  
 Insole, *Re*, 23  
 Insurance Co., *An*, 177  
 International Contract Co. (14 L. T. N. S.  
     726), 157  
     — (26 L. T. N. S.  
     358), 199  
 Inventor's Assoc., 173, 175  
 Ireland *v.* Trembath, 23  
 Irrigation Co., 158, 159  
 Isaac *v.* Gompertz, 20  
 Isle of Wight Ferry Co., 161  
 Ives, *Re*, 117

## J.

J. C., *Exp.*, 235  
 Jackson *v.* Mawby, 234  
 James *v.* Reg. (5 Ch. D. 153), 290  
     — (L. R. 17 Eq. 503), 292  
 Jameson, *Exp.*, 55, 56  
 Jarman, *Exp.*, 214, 215  
 Jarvis, *Re*, 254  
 Jefferson *v.* Warrington, 214  
 Jeffreys *v.* Connor, 73

Jeffreys *v.* Drysdale (9 W. R. 428), 256  
     — (7 Jur. N. S. 667),  
     257  
     — *v.* Smith, 27  
 Jenkins, *Re*, 36  
     — *v.* Bryant, 223  
 Jennings *v.* Johnson, 217  
 Joad *v.* Ripley, 18  
 Johnson, *Re*, 59, 66  
     — *v.* Burgess, 148, 150  
 Joint Stock Coal Co., 157, 171, 181  
     — &c., 170  
 Jolliffe, *Re* (L. R. 9 Eq. 668), 27, 57, 61,  
     80  
     — (W. N. 1868, 56), 27, 61  
     — *Exp.* (8 Beav. 168), 55  
     — *Re* (3 Jur. N. S. 633), 86  
 Jones, *Re* (W. N. 1866, 65), 28  
     — (3 Drew. 679), 41, 42  
     — (39 L. J. Ch. 190), 64, 80  
     — (18 W. R. 312), 64, 84  
     — (4 Jur. N. S. 581), 78  
     — (6 W. R. 762), 81  
     — (5 Jur. N. S. 138), 105, 106  
     — (22 W. R. 837), 259  
     — (2 Ch. D. 70), 260, 264  
     — (2 D. F. & J. 554), 264  
     — *v.* Frost, 211  
     — *v.* James, 259  
     — *v.* Lewis, 4  
 Justice, Courts of, *Re* (W. N. 1867, 148),  
     26  
     — — — (W. N. 1868, 124),  
     85

## K.

KRANE, *Re*, 210  
 Keeler, *Re*, 246  
 Keen, *Re*, 10  
 Kelland *v.* Fulford, 61, 125  
 Kelsall *v.* Minton, 28  
 Kelson *v.* Kelson, 8  
 Kensington Station Act, *Re*, 51  
 Kentish Royal Hotel Co., *Re*, 176  
     — Town Estate, *Re*, 105, 121  
 Kerr, *Re*, 42  
 Kershaw, *Re*, 266  
 Kidd *v.* Tallentire, 148, 149, 150  
 Kilmorey, Earl of, *Re*, 120, 121, 132  
 King's Coll., *Re*, 82  
 Kingston Rly. Co., 204  
 Kinsey, *Re*, 70  
 Kirk *v.* Reg., 291  
 Kirkpatrick, *Re*, 303  
 Kitton, *Re*, 214  
 Knapping *v.* Tomlinson, 23  
 Knight, *Re*, 43

Knight v. Knight (16 Beav. 358), 21  
 — — (W. N. 1876, 114),  
 245

Knowles, *Re*, 265

## L.

LAING, *Re*, 98

Lake v. Eastern Counties Rly., 87

Lambert v. Hutchinson, 294

— v. Newark, 20

Lambeth, Rector of, *Exp.*, 74

Lambie v. Lambie, 21

Lamotte, *Re*, 248, 257

Lancashire, &c., *Re*, 64

Land Credit Co., 163

— & Sea Telegraph Co., *Re*, 170

Langford, *Re*, 94, 95

Langham Skating Rink Co., 154, 158,  
 159

Langley Mill Co., 157

Lapworth, *Re*, 57, 60, 61, 64, 82

Larkin, *Re*, 267

Lasseur v. Tyrconnel, 28

Lathropp, *Re* (L. R. 1 Eq. 467), 81

— (14 W. R. 326), 79

Lathropp's Charity, *Re*, 66

Latta, *Exp.*, 5, 186

Laugharne Rly. Co., *Re*, 51, 52

Lavell, *Exp.*, 55

Law & Gould, *Re*, 214

Lawrence, *Re*, 39

— v. Fletcher, 210

— v. Maule, 56

— v. Richmond, 309

Lawson, *Exp.*, 79

Lazarus, *Re*, 38

Leadhitter, *Re*, 214

Leaf v. Coles, 283

Lechmere v. Clamp, 244

Lees, *Re*, 266, 268

Leese v. Knight, 7

Legge, *Re*, 120

Legh, *Re*, 138

Leigh, *Re*, 58, 65, 81, 85, 86

Leslie, *Re*, 266, 268

Letchford, *Re*, 138

Levett, *Re*, 38

Lewes, *Re* (L. R. 6 Ch. 356), 31

— (1 Mac. & G. 23), 264

Lewin, *Re*, 216

Lewis, *Re* (24 W. R. 103), 134

— (1 Q. B. D. 724), 217

— v. Hillman, 36

Lilley, *Re*, 58

Lincoln (Mayor of), *Exp.*, 85

— Methodist Chapel, *Re*, 256

Lindsay v. Tyrrell, 310

Lister's Hos., *Re*, 26, 68, 238

Little, *Re*, 259

Littlehampton Steamship Co. (34 L. J.  
 Ch. 237), 158

— — — (2 D. J. & S.  
 521); 168

Littlewood v. Pattison, 73

Liverpool, *Re*, (1 Sim. N. S. 202), 64

— (L. R. 5 Eq. 582), 88

— (Corp. of), 65, 66

— (Rector of), *Exp.*, 67

Llangynog Co., 5

Lloyd v. Johnes, 128

Lockwood, *Exp.*, 66, 72

London Alkali Co., 166

— Bank of Scotland, 160

— (Bishop of), *Exp.*, 63, 80, 85, 86

— Brighton, &c., *Re*, 80 82, 85, 239

— & Caledonian Co., 162

— Chatham & Dover Rly. Co., *Exp.*

(8 W. R. 636), 25, 49, 89

— Chatham, &c., *Exp.* (W. N.

1868, 75), 88, 89

— (Corp. of), *Exp.* (W. N. 1878,

238), 25

— (Corp. of), *Exp.* (L. R. 5 Eq.

418), 63, 86

— & County Coal Co., 154, 155,

158

— — Tramways, *Re*, 52,

53

— Discount Co., 159

— India-Rubber Co., 169, 171

— & Manchester Ass., 166

— Marine Ass., 164

— (Mayor of), 5

— & Mediterranean Banking Co.,

160

— & Paris Banking Corp., 155

— & S. W. Rly. Co., *Re*, 80

— Suburban Bank, 166

— & Westminster, &c., Co. (1 H. &

M. 561), 170

— & Westminster, &c., Co. (12 W.

R. 6), 173

— & Westminster, &c., Co. (17 L.

T. N. S. 559), 176

Long, *Re* (1 W. R. 226), 73, 79

— (10 Jur. N. S. 417), 78, 83

— 17 W. R. 218), 255, 266

Longuet v. Hockley, 33

Longworth, *Re*, 85

Lonsdale Vale Co., 157, 159

Lorenz, *Re*, 266

Lorimer, *Re*, 41

Loughton (Rector of), *Exp.*, 70, 82

Lovat v. Duke of Leeds, 106

Loveband, *Re*, 182

Lowe, *Exp.*, 60  
 Lowestoft Tramways, *Re*, 52, 53  
 Lowry, *Re*, 81, 87, 246  
 Lows, *Exp.*, 8  
 Lucas v. Dalziel, 230  
     — v. Peacock, 211  
 Ludlow (Corp. of) v. Greenhouse, 237,  
     239, 240, 241  
 Lymington Baptist Chapel, *Re*, 66, 67  
 Lyster v. Dolland, 149

## M.

M'CARTHY, *Re*, 250  
 Macaulay, *Exp.*, 64  
 Macfarlane, *Re*, 37  
 Mackenzie v. Mackenzie, 249, 256  
 Mackintosh, *Re*, 266  
 Maclean, *Re*, 42  
     — v. Dawson, 309  
 Maddy v. Hale, 74, 152  
 Madras Coffee Co., 159  
 Madrid Rly., 163  
 Magdalen, &c., *Re*, 237  
 Mair, *Re*, 60  
 Mais, *Re*, 253  
 Mallin, *Re*, 108  
 Mallorie, *Re*, 272  
 Manchester Burial Board, *Re*, 82  
     — &c., *Re* (8 Hare 31), 58  
     — — (21 Beav. 162), 63,  
         80  
     — Assoc., 173, 174  
     — (Dean of), *Exp.*, 63, 80, 85  
     — New Coll., *Re*, 236, 237,  
         238  
     — Queensland Co., 159  
     — Rly., *Re*, 87  
 Manning, *Re*, 246, 247, 254  
 Mansfield v. Green, 28  
 Manson, *Re*, 134  
 Marezzo Marble Co., *Re*, 169, 170  
 Mark, *Re*, 80  
 Marlborough Club Co. (L. R. 1 Eq. 216),  
     172  
     — — (L. R. 6 Eq. 519),  
         185  
     — (Duke of), *Re*, 71, 72  
 Marman, *Re*, 29  
 Marner, *Re*, 40, 42, 129  
 Marriage, *Re*, 75  
 Marriott, *Re*, 255  
 Marron &c. Co., 181, 182  
 Marshall, *Re*, 121, 132  
 Marsham, *Re*, 32  
 Martin, *Exp.*, 56  
     — v. London, Chatham, &c, 89

Martinez, *Re*, 254  
 Marylebone, *Re*, 75, 78  
 Mason, *Re* (L. R. 12 Eq. 111), 42  
     — (W. N. 1872, 77), 65, 81  
     — (L. R. 10 Ch. 273), 243,  
         257  
 Masselin, *Re*, 36  
 Massey v. Allen, 5  
 Matthew, *Re*, 260  
 Matthews, *Re*, 253, 255  
 Maude v. Maude, 10  
 Mawe v. Heaviside, 22  
 Maynard, *Re* (7 Jur. N. S. 232), 92  
     — (16 Jun, 1084), 259  
 Meares, *Re*, 273  
 Medow, *Re*, 10  
 Melling v. Bird, 14, 82, 83  
 Mellor, *Re* (6 Ch. D. 127), 297  
     — (7 Ch. D. 200), 297  
 Mennard v. Welford, 253  
 Merceron, *Re*, 78, 87  
 Mercers' Co., *Exp.* 13, 78, 87, 242  
 Merchant Tailors, *Re*, 81  
 Merchants' Ass. Soc., 164  
 Merry, *Re*, 116  
 Metcalfe, *Re*, 37  
 Metropolitan Omnibus Co., 179  
 Metropolitan Rly., *Re*, 26, 62, 80  
     — v. Warehousing Co., 154  
     — Warehousing Co., 179  
 Mette, *Re*, 74  
 Mewburn, *Re*, 119  
 Meyrick v. Lawes, 3  
     — v. Laws, 61  
 Michell, *Re*, 15  
 Middlesborough Assembly Rooms Co.,  
     154  
 Midland Rly. Co., *Re*, 59  
     — — v. Westcomb, 87  
 Mid-Wales Hotel Co., 177  
 Mildmay v. Methuen, 238  
     — v. Quicke, 125  
 Miles, *Re*, 267  
 Military & General Tailoring Co., 183,  
     184  
 Millner, *Re*, 24  
 Milltown v. Stuart, 8  
 Milne, *Re*, 59  
     — v. Gilbart, 26  
 Milnes, *Re*, 65, 70  
     — v. Busk, 22  
 Milward, *Re*, 108, 109  
 Mockett, *Re*, 265, 266, 267  
 Molony, *Re*, 55  
 Money, *Re* (13 Beav. 109), 37, 311  
     — (2 Dr. & S. 94), 73  
 Montefiore v. Guedalla, 94, 95  
 Moor v. Anglo-Italian Bank, 166, 184

Moore (Sir John) Co., 178  
 Morant, *Re*, 41  
 Moravian Soc., *Re*, 253  
 More v. More, 233  
 Morgan, *Re* (2 W. R. 439) 8, 35, 38  
 — — (L. R. 9 Eq. 587), 96, 97,  
 124, 125, 127  
 — v. Swansca, &c., 244  
 Morres v. Hedges, 74, 152  
 Morris, *Re*, (L. R. 20 Eq. 470), 61, 80,  
 84  
 — *Exp.* (L. R. 12 Eq. 418), 90  
 Morrison, *Re*, 25, 28  
 Morshead, *Exp.*, 92  
 Mortimer v. Picton (10 Jur. N. S. 83),  
 94  
 — — (12 W. R. 292), 95  
 Morton, *Re*, 22  
 Moss v. Dunlop, 23  
 Muggeridge, *Re*, 267  
 Mundell, *Re*, 244, 246, 247, 254  
 Munton, *Re*, 42  
 Muntz & Co., 189  
 Murphy, *Re*, 306  
 Murray, *Re* (3 Dr. & War. 83), 233  
 — (W. N. 1868, 195), 266  
 Musgrove v. Flood, 23  
 Mutlebury v. Haywood, 221  
 Mutlow, *Re*, 89

## N.

NADIN, *Exp.*, 75  
 Nagle, *Re*, 141  
 Naish, *Re*, 306  
 Nash, *Re*, 87  
 — v. Coombs, 69  
 — v. Nash, 58  
 Natal Co., 155  
 National Arms Co., 189  
 — Bank, 181  
 — Credit & Exchange Co., 173  
 — Financial Corp., 154  
 — Funds Ass. Co. (4 Ch. D. 305),  
 14, 186  
 — — — (W. N. 1876,  
 239), 166  
 — Live Stock Co., 158  
 — Savings Bank Ass., 187  
 Neath, &c., *Exp.* (2 Ch. D. 201), 89  
 — *Re* (L. R. 9 Ch. 263), 89  
 Nesbitt, *Re*, 272, 274  
 Nether Stowey Vicarage, *Re*, 144  
 New Gas Co. (5 Ch. D. 703), 154, 172,  
 177, 180, 183, 187  
 — (36 L. T. N. S. 364), 178  
 — Generator Co., 154, 155

Newcastle (Duke of), *Re*, 149  
 Newman, *Re* (L. R. 9 Ch. 681), 65, 124,  
 125  
 — (2 M. & C. 112), 147  
 — (L. R. 2 Ch. 797), 214  
 — v. Selfe, 7  
 Newport Rly. Co., *Re*, 47, 48  
 Newton, *Exp.* (4 Y. & C. Ex. 518), 64,  
 82  
 — *Re* (12 Jur. 1011), 238  
 — v. Ricketts, 214  
 New Zealand Co., 158  
 Nicholas v. Dracachis, 307  
 Nicholl, *Exp.*, 55  
 — v. Jones, 299  
 Nicholson v. Squire, 234  
 Nicoll, *Re* (W. N. 1878, 154), 72  
 — (W. N. 1866, 93), 82  
 — (14 W. R. 475), 83  
 Noble v. Stow, 33  
 Nock v. Nock, 13, 78, 79  
 Norcop, *Re*, 69  
 Norfolk (Duke of), 86  
 Norris, *Re*, 237  
 — v. Wright, 303  
 North London Rly. Co., *Re*, 73, 77  
 — Wales Slate Co., 187  
 — Western Rly., *Re*, 89  
 Northey, *Re*, 105  
 Northumberland Banking Co., 158  
 Northwick, *Exp.*, 63  
 Norton Iron Co., 181, 182  
 — v. Steinkopt, 299  
 Norwegian Iron Co., 154  
 Norwich Soc., *Re*, 223  
 — Yarn Co., 168  
 Notley v. Palmer, 69  
 Nowell v. Whitaker, 312  
 Noyes, *Re*, 134  
 Nugent, *Re*, 275  
 Nune, *Re*, 121

## O.

OGILVIE, *Re*, 149  
 Oldham, *Re*, 72  
 Olive, *Re*, 228  
 Oriental Commercial Bank (15 W. R. 7),  
 159  
 — — — (W. N. 1876,  
 283), 183  
 Ormerod, *Re*, 257  
 Orrell Colliery Co., 159  
 Osborn, *Re*, 244  
 Osborne, *Re*, 4, 14  
 Otte v. Castle, 36  
 Owen, *Re*, 257  
 — v. Henshaw, 210



Owen's Patent Wheel Co., 159, 160, 181,  
185  
Oxenham, *Re*, 259  
Oxford, &c., *Re*, 65

## P.

PACKER *v.* Packer, 23  
Paddon, *Re*, 82  
Palmer, *Exp.* (13 Jur. 781), 85  
— *Re* (L. R. 13 Eq. 408), 141  
Panonia Leather Cloth Co., 174, 175  
Paragon Mining Co., *Re*, 294  
Parby, *Re*, 129, 250, 263  
Paris Skating Rink, 166  
Parke, *Re* (12 Sim. 329), 238  
— (21 L. T. 218), 262  
Parker, *Re* (L. R. 13 Eq. 495), 64, 81  
— (20 W. R. 289), 80  
— (32 Beav. 580), 252, 260  
Parkinson, *Re*, 274  
Parry, *Re* (12 Jur. 615), 43  
— (34 Beav. 462), 120  
Partington *v.* Reynolds, 5  
Patent Bread Co., 154  
— Cocoa Fibre Co., 177  
— Floor Cloth Co., *Re*, 171, 187  
— Screwed Boot & Shoe Co., 176  
— Steam Engine Co., 168  
— Ventilating Co., 190, 191, 194, 196  
Paterson *v.* Paterson (10 L. T. N. S.  
183), 83  
— — — (L. R. 2 Eq. 31),  
247, 251, 260  
Pattison, *Re*, 14, 83, 84, 85  
Pawlett, *Exp.*, 303  
Paxton *v.* Bell, 186  
Peacock, *Re* (15 W. R. 100), 107  
— (12 Jur. N. S. 959), 125  
Pearce, *Re*, 62  
— *v.* Gray, 17  
Peareth *v.* Marriott, 96, 227  
Pearse *v.* Brooke, 295  
Pearson, *Re*, 243, 257  
— *v.* Wilcox, 12  
Peart, *Re*, 40  
Peatfield *v.* Barlow, 210  
Pedley, *Re*, 58  
Peillon *v.* Brooking, 94  
Pelling *v.* Goddard, 36  
Pender, *Re*, 213  
Penfold *v.* Mould, 23  
Penny *v.* Penny, 75  
Pen-y-Van Co., 166  
Percy Mining Co., 186  
Perkes, *Re*, 68  
Perks, *Re*, 76, 77

Perry, *Re*, (W. N. 1875, 17), 25, 38  
— (23 W. R. 335), 37  
— (1 Jur. N. S. 917), 58, 68,  
76  
— *v.* Walker, 311  
Petersburg Gas Co., (W. N. 1874, 196),  
154  
— — (33 L. T. N. S. 637),  
167, 178  
Petroleum Co., 175  
Petts, *Re*, 267, 268  
Petty *v.* Petty, 18, 28  
Peyton, *Re*, (L. R. 7 Eq. 463), 265  
— (10 W. R. 515), 266  
Pfleger, *Re*, 73  
Phelps, *Re*, 29, 37  
Phené, *Re*, 31  
Phillipotts, *Re*, 236, 237, 238, 241  
Phillips, *Exp.*, (11 W. R. 54), 88  
— (3 De G. & S. 3), 162  
— *Re*, (L. R. 6 Eq. 250), 73  
— (9 Jur. 959), 238  
— (L. R. 4 Ch. 629), 259,  
260, 264  
Pickance, *Re*, 12, 262  
Pickard *v.* Mitchell, 83  
Piddocks *v.* Smith, 7  
Pilcher *v.* Arden, 212  
Pinkerton *v.* Easton, 211, 212  
Pinto Mining Co., 162  
Plenty *v.* West, 255  
Plumstead Water Co., 186  
Plunkett *v.* Pearson, 149  
Pole *v.* Pole, 71  
Pongerard, *Re*, 139  
Pooley *v.* Bosanquet, 310  
Pope, *Re*, 23  
Poplar School, *Re*, 26, 38, 68, 238  
Portadown, *Re*, 65  
Porter, *Re*, 253, 255  
Potter, *Re*, 227, 229  
— *v.* Jackson, 500  
Potteries Rly. Co. *v.* Minor, 204  
Poulet, (Earl) *v.* Hood, 266  
Powell, *Re*, (W. N. 1874, 221), 141  
— (4 K. & J. 338), 261  
— *v.* Matthews, 244  
— *v.* Oakley, 229  
Power, *Re*, 86  
Prescott *v.* Wood, 79  
Price, *Re*, (W. N. 1872, 159), 20, 94  
— (L. R. 6 Eq. 460), 252  
Primrose, *Re*, 263  
Prince, *Re*, 293  
Pring, *Re*, 14, 264  
Pritchard *v.* Roberts, 211, 302  
Procter, *Re*, 262  
Pryer *v.* Gribble, 300

Pryor, *Re*, (W. N. 1876, 141), 26, 80  
 — (36 L. T. N. S. 202), 62  
 Pryse, *Re*, 141  
 Purser v. Darby, 87  
 Purvis v. Abraham, 259  
 Puttrell, *Re*, 37  
 Puxley, *Exp.*, 112

## Q.

QUARMAN v. Williams, 294  
 Queen Camel, *Re*, 66  
 Queen's Building Soc., 178  
 Queensbury Case, 100

## R.

RAILSTON, *Exp.*, 79  
 Railway Finance Co., 177, 185  
 Rainsdon, *Re*, 23  
 Ram, *Exp.*, 55, 56  
 Ranking, *Re*, 28  
 Raphael, *Re*, 252  
 Rawlins, *Re*, 100, 102  
 Rawlinson v. Moss, 222  
 Reading, *Re*, 237  
 — v. Hamilton, 79  
 Rean, *Re*, 271  
 Reaston, *Re*, 57, 68, 76  
 Redhead, *Re*, 62  
 Reece v. Taylor, 295  
 Rees, *Exp.*, 237, 239  
 — v. Williams, 217, 218  
 Regent United Service Stores, 172  
 Rehoboth Chapel, *Re*, 64  
 Reibey, *Exp.*, 235  
 Reiner v. Salisbury, 290  
 Renshaw, *Re*, 260  
 Reuss (Princess of) v. Bos, 154, 163  
 Reveley, *Re*, 101  
 Reynault, *Re*, 255  
 Reynolds, *Re*, 26, 69, 125  
 Rhys v. Dare Rly., 75  
 Rica Gold Co., 167, 179  
 Richards, *Exp.*, (1 J. & W., 264), 264  
 — *Re*, (5 De G. & S. 636), 259  
 — (1 D. M. & G., 719), 274  
 — & Co., 199  
 — v. Scarborough Co., 222, 223  
 Richardson v. Eytton, 300  
 — v. Moore, 152  
 Ricketts, *Re*, (1 J. & H. 70), 43  
 — (9 L. T. N. S., 405), 313  
 Roberts, *Exp.*, (3 Atk. 6), 281  
 — *Re*, (9 W. R. 758), 26  
 — (W. N. 1869, 88), 43

Roberts, *Re*, (3 Atk. 308), 275, 276  
 — (22 L. T. N. S., 262), 301,  
 302  
 — (L. R. 10 Eq. 402), 302  
 — v. Bull, 43  
 — v. Collett, 22  
 — v. Evans, 4  
 Robin, *Re*, 23, 69  
 Robinson, *Re*, 298  
 — v. Harrison, 10  
 Rolles, *Re*, (10 Hare App. 39), 237  
 — (3 D. M. & G. 153), 254,  
 258  
 Rose v. Rolls, 30  
 Row, *Re*, 69  
 Rowland v. Oakley, 31  
 Rowley v. Adams, (16 Beav. 312), 33  
 — (14 Beav. 130), 245,  
 258  
 Royal Victoria Syndicate, 162, 163  
 Royston Grammar School, *Re*, 237, 241  
 Rudge v. Winnall, 229  
 Rugby, *Re*, 238  
 Rush, *Re*, 148  
 Rushworth v. Walden, 54, 56  
 Russell, *Exp.*, (1 Sim. N. S. 404), 258  
 — *Re*, (22 W. R. 399), 106  
 — (1 Sim. N. S. 409), 260  
 Rustomgee v. Reg., 290  
 Ryan, *Re*, 249  
 Rylar, *Re*, 119

## S.

S. — *Re*, (4 Ch. D. 301), 273  
 S. — (25 W. R. 133), 269  
 Sadler, *Re*, 92  
 St. Bartholomew's Hos., *Exp.*, 86  
 St. David's Mining Co., 159, 176  
 St. Giles, *Re*, 26, 37, 238  
 St. James' Club, 164  
 St. John's College, *Re*, 92  
 St. Katherine's Dock, 81  
 St. Martin's (Rector of), *Exp.*, 67  
 St. Nazaire Co., 15, 171, 187, 205, 206  
 St. Pancras, *Re*, 67, 76  
 St. Paul's, (Dean of), *Exp.*, 74  
 — (Precentor of), *Exp.*, 74  
 St. Thomas' Church, 74  
 — Dock Co., 157, 179  
 — Hospital, *Re*, 66  
 St. Wenn, *Re*, 237  
 Salmon v. Anderson, 20  
 Sanders v. Homer, 249  
 Sanderson v. Walker, 11  
 Sanderson's Patents, 155  
 Sandford, *Re*, 287

- Sanford, *Exp.*, 56  
 Saumarez, *Re*, 260  
 Saville, *Re*, 14  
 Sawston, (Vicar of), 81  
 Scarsdale (Lord) *v.* Curzon, 112  
 Schofield, *Re*, 248  
 Scholefield *v.* Lockwood, 211  
 Scott *v.* Heisch, 111  
   — *v.* Scott, 87  
 Scrivener *v.* Smith, 27, 33  
 Scully *v.* Dundonald, 300  
 Sea & River Co., 155  
 Seagears, *Exp.*, 239  
 Seidler, *Exp.*, 5, 186  
 Sewart, *Re*, 62, 79  
 Sexton Barns, *Re*, 124  
 Shakespeare Walk School, *Re*, 80  
 Sharp & Co., 189  
   — *v.* Lush, 310  
 Sharpe, *Re*, 36, 38  
 Sharpley, *Re*, 259  
 Sharshaw *v.* Gibbs, 8  
 Shaw, *Re*, (L. R. 14 Eq. 9), 124, 125  
   — (L. R. 12 Eq. 124), 266  
 Sheffield, *Re*, 108  
 Shelmerdine, *Re*, 253  
 Shepheard, *Re*, 96, 98, 128  
 Shepherd *v.* Churchhill, 251  
 Sheppard, *Re*, 258  
 Sherwood *v.* Sanderson, 275, 276  
 Shields Marine Ass., 164  
   — Insurance Co., *Re*, 171  
 Shillito *v.* Collett, 224, 225  
 Shipbrook *v.* Hinchinbrook, (13 Ves.  
   894), 2  
 Shipbrook *v.* Hinchinbrook (2 Dick, 547)  
   233  
 Ship's Case, 187  
 Shipton (Rector of), *Exp.*, 66, 67, 81  
 Shrewsbury Hos., *Exp.*, 26  
   — School, *Re*, 237, 238, 241  
   — *v.* North Staffordshire Rly.  
     Co., 72  
 Shurmer *v.* Hodge, 6  
 Sidney *v.* Wilmer, 83  
 Silkstone Colliery, 187  
 Sillar, *Re*, 94  
 Simmons *v.* Bates, 7  
 Simson, *Re*, 265  
 Singleton, *Re*, 86  
 Sir John Moore Co., 178  
 Sirdefield *v.* Thacker, 28  
 Skinner, *Exp.*, 237, 239  
 Skipton Rly., 161  
 Skitter, *Re*, 246  
 Skynner *v.* Pelichet, 250  
 Slark, *Re*, 119  
 Slater *v.* Darlaston Co., 198, 200  
 Slewringe, *Re*, 238, 241  
 Sloper, *Re*, 259  
 Smirthwaite, *Re*, 253, 259  
 Smith, *Exp.* (1 Sim. N. S. 165), 164  
   — (22 W. R. 294), 230, 231  
   — *Re* (3 Jur. N. S. 659), 43  
   — — (14 W. R. 949), 60  
   — — (L. R. 9 Eq. 178), 62  
   — — (W. N. 1878, 196), 108,  
     112  
   — — (W. N. 1872, 134), 255  
   — — (1 Russ. 348), 273  
   — *v.* Harwood, 11  
   — *v.* Smith, 246  
   — *v.* Winter, 212  
 Smyth, *Re* (Ir. R. 10 Eq. 66), 69  
   — (2 De G. & S. 781), 259  
 Somerset & Dorset Rly., 205  
 Sottomaioir, *Re*, 281  
 South, *Re*, 149, 150  
   — Essex Estuary Co., 173  
   — of France Syndicate, 163  
   — Wales Rly., *Exp.*, 89  
   — — Steam Ship Co., 162  
   — Western Rly., *Exp.*, 90  
 Southwold Rly. Co., *Re*, 48, 62  
 Sowry, *Re*, 59, 64, 67, 68  
   — *v.* Sowry, 69  
 Spackman, *Exp.*, 158  
 Sparks, *Re*, 263, 264  
 Sparrow, *Re*, 252, 257  
 Speer, *Re*, 66, 124  
 Spence's Co., 178  
 Spencer, *Re*, 138  
 Sperling *v.* Rochfort, 23  
 Spiller, *Re*, 25, 268  
 Spittle *v.* Walton, 270  
 Spooner, *Re*, 86, 87  
 Spurstowe, *Re*, 68  
 Spurway, *Re*, 118  
 Stables, *Re*, 288  
 Stackpoole *v.* Beaumont, 22  
 Stafford & Uttoxeter Rly., 205  
 Staines Rly. Co., 48  
   — *v.* Giffard, 28  
 Standering *v.* Hall, 23, 69, 125  
 Standish, *Re*, 125  
 Stanhope, *Re*, 19, 20  
 Stanley, *Exp.*, 282  
   — *v.* Bond, 295  
 Staples, *Exp.*, 58, 84  
 Stapleton, *Re*, 56  
 Star & Garter Hotel Co., 178, 184  
 Stead, *Re*, 75  
 Steam Stoker Co., 167, 178  
 Steed *v.* Calley, 25  
 Steel, *Re*, 55, 56  
 Steeping (Rector of), *Exp.*, 72

Stephens v. Cork Rly., 205  
 Sterry, *Re*, 58, 76, 77  
 Stevens, *Exp.*, 88, 89  
     — v. Mid-Hants Rly., 204  
     — v. Savage, 234  
 Steward, *Re*, 74  
 Stillwell v. Ashley, 244  
 Stock, *Re*, 36  
 Stocksbridge Rly. Bill, *Exp.*, 49  
 Stokes, *Re*, 254, 255, 256  
 Stone, *Re*, 266  
 Storey, *Re*, 237  
 Storforth Lane Colliery Co., *Re*, 171  
 Straford, *Re*, 214  
 Strathmore, *Re*, 72  
 Strutt, *Re*, 117  
 Stuart, *Re*, 264  
     — v. Stuart, 303  
 Stubbs v. Sargon, 22  
 Studdert, *Exp.*, 63  
 Stutely, *Re*, 40  
 Styan, *Exp.*, 85  
 Suburban Hotel Co., 157, 158  
 Suir Island, *Re*, 238  
 Summers, *Re*, 24  
 Sunderland (Freemen of), *Exp.*, 77  
 Sutton, *Re*, 43  
 Swan, *Re*, 22, 42  
 Sweeper, *Re*, 41  
 Swift, *Re*, 23, 26  
 Sykes v. Beadon, 161  
 Symes v. Pugh, 266  
  
 T.  
 TANNER, *Re*, 293  
 Tarbuck v. Tarbuck, 16  
 Tardrew v. Howell, 210  
 Tatbam, *Re*, 254, 255  
 Taylor, *Re* (40 L. J. Ch. 454), 65  
     — (1 Mac. & G. 210), 83  
     — (4 Ch. D. 157), 224, 225, 226  
     — (11 Sim. 178), 225  
     — (W. N. 1866, 5), 247  
     — v. Chichester Rly. Co., 71, 72  
     — v. Taylor (1 Ch. D. 431), 96,  
         99, 112, 118  
     — v. — (3 Ch. D. 145), 112  
     — v. — (L. R. 20 Eq. 302),  
         112  
 Tebbutt v. Potter, 300  
 Teign Valley Rly., 204  
 Telegraph Construction Co., 189  
 Temple Church, *Re*, 81  
 Templer, *Re*, 244  
 Tewkesbury Rly. Co., 149  
 Tbakham, *Re*, 43  
 Thames Mutual Co., 174

Tharp, *Re*, 147  
 Thomas, *Re*, 39  
     — v. Finlayson, 222  
     — v. Reg. (L. R. 10 Q. B. 31),  
         290  
     — — (L. R. 10 Q. B. 44),  
         292  
 Thompson, *Exp.* (3 L. T. N. S. 317),  
     211  
     — *Re* (Johnson, 418), 107, 127,  
         128  
     — (W. N. 1871, 190), 266,  
         268  
 Thomson v. Univ. of London, 238  
 Thorne, *Re*, 132  
 Thorner, *Exp.*, 67  
 Thornhill v. Milbank, 59, 125  
 Thornton, *Re*, 40, 250  
     — v. Finch, 149  
 Thorp, *Re*, 118  
 Thurgood, *Re*, 214, 215  
 Tibbett, *Re*, 132  
 Tibbs, *Re*, 266  
 Tid St. Giles, 68  
 Tillett v. Pearson, 149  
 Tilstone, *Re*, 21  
 Times Life Ass. Co. (L. R. 5 Ch. 381),  
     162  
     — — (L. R. 9 Eq. 382),  
         177, 184, 185  
 Tobin v. Reg. (12 W. R. 838), 290  
     — (11 W. R. 701), 292  
 Todd, *Re*, 30  
 Tolson v. Sheard, 105  
 Tomkins v. Lane, 28  
 Tomline v. Reg. 292  
 Tomlinson, *Exp.*, 270, 272  
 Tookey, *Re*, 85  
 Topping v. Searson, 222  
 Tottenham, &c., *Re*, 89  
 Townsend, *Re*, 264  
 Townshend, *Re*, 279  
 Tracey, *Re*, 36  
 Trades Bank, *Re*, 171  
 Tramway Wheel Co., 159  
 Travis v. Illingworth, 25  
 Treacher, *Re*, 73  
 Trent Valley Rly. Co., 173  
 Trick, *Re*, 41, 42  
 Trinity House, *Exp.*, 79  
 Trower, *Re*, 35, 37  
 Tuck, *Re*, 266, 267  
 Tufnell, *Re*, 290, 292  
 Tumacacori Mining Co., 154  
 Tunis Rlys. Co., 200  
 Tunstall, *Re* (14 L. T. N. S. 352), 129  
     — *Exp.* (4 De G. & S. 421), 255,  
         262

Turbut, *Re*, 129  
 Turnbull, *Re*, 12  
 Turner, *Exp.* (2 D. F. & J. 376), 212  
   — *Re* (10 W. R. 128), 79  
   — (2 Coop. T. L. C. 163), 272  
 Tutin, *Re*, 273  
 Tweedy, *Re*, 259  
 Twynam v. Porter, 210, 211  
 Tylden, *Re*, 69  
 Tyler, *Re*, 69  
 Tynemouth Tramway, *Re*, 52

## U.

UNION Bank of Calcutta, 163  
 United Merthyr Collieries, 160  
   — Ports, &c., Co., *Re*, 171  
   — Service Co., *Re*, 171, 181, 182  
 Unity General Ass. Assoc., 173, 174  
 Universal Drug Ass., 157, 159  
   — Non-Tariff Co., 185  
 Upfull, *Re*, 29, 37  
 Upton Warren, *Re*, 236, 238  
 Uruguay Rly. Co., 157, 167

## V.

VALE of Neath, &c., *Re*, 60  
 Vane v. Vane, 306  
 Varley, *Re*, 12  
 Varteg Chapel, *Re*, 12  
 Vandrey, *Re*, 83  
 Vaughan v. Headfort, 21  
 Veal v. Veal, 22, 31  
 Velletri & Terracina Co., 174  
 Venour, *Re*, 109  
 Viall, *Re*, 264  
 Vickers, *Re* (W. N. 1876, 178), 252  
   — (3 Ch. D. 112), 257  
 Victor v. Devereux, 16  
 Vidler v. Parrott, 95  
 Viney, *Re*, 212  
 Vivar (The), 309  
 Vron Slate Co., 173

## W.

WADDILOVE v. Taylor (13 Jur. 1023), 29  
   — (12 Jur. 598), 222  
 Wainwright, *Re*, 147  
 Waite v. Littlewood, 94  
 Walker, *Re* (16 Jur. 1154), 8, 35, 36  
   — (7 Rly. Ca. 129), 83  
   — (3 Ch. D. 209), 244  
   — v. Ware, &c., Rly., 88  
 Wall v. Rogers, 4, 299  
 Wallace (Lord), *Re*, 101  
 Walsh v. Walsh, 28

Walsh v. Wason, 295  
 Walton, *Re*, 215  
 Ward, *Exp.* (2 De G. & S. 4), 73  
   — (6 Ves. 579), 275  
   — *Re* (2 W. R. 406), 29  
   — (2 Giff. 122), 41  
   — (14 W. R. 96), 267  
 Warde v. Warde, 224, 225  
 Waring, *Re*, 41, 42  
 Warland Commercial Co., 180  
 Warne, *Re*, 121  
 Warren, *Re*, 281  
 Warrender v. Foster, 247  
 Warwick, *Re*, 239  
   — Rly. Co., 48  
 Wastell v. Leslie, 20  
 Watford, *Exp.*, 238  
 Watlington, *Re*, 45  
 Watson, *Exp.* (Jac. 161), 271  
   — *Re* (10 Jur. N. S. 1011), 69  
 Watts, *Re*, 274  
   — v. Jefferyes, 295  
 Waugh, *Re*, 214  
   — v. Waddell, 214  
 Wear Engine Co., 178  
 Webb, *Re* (L. R. 2 Eq. 456), 42  
   — (2 Phil. 10), 272, 274  
 Wedderburn, *Re*, 265  
   — v. Wedderburn, 223  
 Wedgwood Coal Co., 198, 199  
 Weeding, *Re*, 247  
   — v. Weeding, 21  
 Wellesley v. Mornington, 295  
 Wellington (Duke of), *Re*, 92  
 Wells v. Kilpin, 149  
 West Ham, *Re*, 238, 242  
   — Hartlepool Co., 157, 182  
   — Indian Steam Packet Co., 192  
   — Retford, *Re*, 237  
   — Riding (Undertaking of), *Re*, 48  
   — Surrey Tanning Co., 155, 159  
 Westbrook, *Re* (L. R. 11 Eq. 252), 10  
   — (W. N. 1873, 167), 31  
 Western Benefit Building Soc., 175  
   — of Canada Co., 200  
   — Canada Oil Co., 156, 157, 179  
   — District Bank, 160  
 Westminster (Dean of), *Re*, (26 Beav. 214), 74  
   — (18 Jur. 1113), 74  
 Westwood, *Re*, 139  
 Wey Canal, 161  
 Whalley v. Whalley, 222  
 Wheeler, *Re*, 259, 264  
   — v. Tootel, 121, 129  
 Whitaker v. Thurstan, 6  
 Whitby, *Re*, 25, 306

- White v. Herrick, 22  
   — v. Leeson, 109  
 Whiteley, *Re*, 114, 121  
 Whiteling, *Re*, 40  
 Whitely, *Exp.*, 260  
 Whitfield (Incumbent of), *Re*, 66, 85  
   — v. Prickett, 295  
 Whittaker, *Re*, 272  
 Whitton, *Re*, 41, 42  
 Whitworth (Curate of), *Exp.*, 72  
 Wickens, *Re*, 262  
 Widdow, *Re*, 24  
 Widgey v. Tepper, 293, 294  
 Widnes Rly. Co., *Re*, 50  
 Wigan Glebe Act, *Re*, 66  
   — Junction Rly., *Re*, 49, 53  
 Wigg v. Tiler, 285  
 Wight, *Re*, 66, 67  
 Wilding v. Bolder, 255  
 Wilkin v. Nainby, 16  
 Wilkinson, *Exp.*, (3 De G. & S. 633), 58, 73  
   — *Re* (L. R. 9 Eq., 71), 10  
   — (L. R. 9 Eq., 343), 62  
   — (21 W. R. 537), 113, 121  
   — L. R. 13 Eq. 634), 141  
   — v. Belsher, 311  
   — v. Joughin, 233  
   — v. Schneider, 30  
 Wilks v. Groom, 251  
 Willan, *Re*, 7, 259  
 Willats v. Gay, 23  
 Willey v. South Eastern Rly., 88  
 Williams, *Re*, (20 W. R. 967), 113  
   — (W. N. 1878, 189), 127  
   — (6 Jur. N. S. 1064), 229  
   — v. Allen, 28  
   — v. Aylesbury Rly. Co., 65, 66  
   — v. Williams, 112  
 Wills, *Re*, 263  
 Willway, *Re*, 141  
 Wilson, *Re*, (3 De G. J. & S. 410), 68  
   — (32 L. J. Ch. 191), 72  
   — 1 L. T. N. S. 25), 116, 128  
   — v. O'Leary, 32  
   — v. Round, 211  
 Wilton v. Hill, 299  
 Winchester (Bishop of), *Exp.*, 74  
   — (Warden of), *Exp.*, 59  
 Winder, *Re*, 68  
 Windham, *Re*, 273  
 Windsor, &c., *Re*, 79  
 Wing v. Tottenham, &c., 88  
 Winkworth v. Winkworth, 37, 40  
 Winscom, *Re*, 225  
 Winterbottom, *Re*, 16, 213  
 Winteringham, *Re*, 260  
 Wise, *Re*, 259, 261  
 Wiseman, *Re*, 263  
 Withington v. Withington, 253  
 Wolff, *Re*, 89  
 Wolley v. Jenkins, 112  
 Womersley v. Merritt, 161  
 Wood, *Re*, (15 Sim. 469), 38  
   — (L. R. 11 Eq. 155), 42  
   — (L. R. 20 Eq. 372), 69  
   — (L. R. Eq. 589), 74  
   — (3 M. & C. 266), 147  
   — (L. R. 10 Eq. 572), 152  
   — (3 De G. F. & J. 125), 248  
   — (7 Jur. N. S. 323), 260  
   — (1 De G. F. & J. 142), 272  
   — (29 L. J. Ch. 54), 272  
   — v. Beetlestone, 256  
   — v. Boucher, 13  
   — v. Vincent, 294  
 Woodard, *Re*, 213  
 Woodburn, *Re*, (1 De G. & J. 333), 43  
   — (31 L. T. N. S. 237), 85  
 Woodcock, *Re*, (L. R. 3 Ch. 229), 113  
   — (L. R. 13 Eq. 183), 95,  
     126  
 Woodgate, *Re*, 253  
 Woodward v. Pratt, 31  
 Wool v. Townley, 17  
 Woollard, *Re*, 36  
 Wooller, *Re*, 281  
 Woolley, *Re*, 12  
 Wootton, *Re*, 74  
 Wordsworth v. Dayrell, 22  
 Wortham v. Pemberton, 227  
 Worthing Hotel Co., 171  
 Wragg, *Re*, 258  
 Wrench v. Wynne, 295  
 Wrey, *Re*, 58  
 Wright, *Re*, (1 Sm. & G. App. 5), 36  
   — (3 K. & J. 419), 42  
   — v. King, 221  
   — v. Rutter, 23  
 Wycherley, *Re*, 6, 41, 261  
 Wyersdale, *Re*, 240  
 Wylde, *Re*, 40, 286  
 Wyllie v. Ellice, 16  
 Wyllly, *Re*, 42  
 Wynch v. Grant, 232  
 Wynn, *Re*, 141  
  

Y.

 YARMOUTH Pier Co., *Re*, 53  
   — Rly. Co., *Re*, 49  
 Yates, *Exp.* (17 W. R. 872), 86  
   — *Re* (7 W. R. 711), 230  
 Yeates, *Re*, 80, 84  
 Yetts, *Re*, 214, 21  
 Yorkshire Fibre Co., 160  
 Young, *Re*, 39, 40

# TABLE OF STATUTES.

|                                                          | PAGE   |
|----------------------------------------------------------|--------|
| 36 Geo. III. c. 52 (Legacy Duty) . . . . .               | 45, 46 |
| 42 Geo. III. c. 116 (Land Tax) . . . . .                 | 143-5  |
| 52 Geo. III. c. 101 (Romilly's Act) . . . . .            | 236-42 |
| 4 Geo. IV. c. 76 (Marriage Act) . . . . .                | 235    |
| 1 Will. IV. c. 65 (Property Law Amendment) . . . . .     | 136-39 |
| 3 & 4 Will. IV. c. 74 (Fines and Recoveries) . . . . .   | 146    |
| ———— c. 77 (Grammar Schools) . . . . .                   | 241    |
| 4 & 5 Will. IV. c. 29 (Irish Securities) . . . . .       | 303    |
| 5 & 6 Will. IV. c. 76 (Municipal Corporations) . . . . . | 241    |
| 1 & 2 Vict. c. 110 (Charging Order) . . . . .            | 293-95 |
| 2 & 3 Vict. c. 54 (Talfourd's Act) . . . . .             | 224    |
| 3 & 4 Vict. c. 77 (Grammar Schools) . . . . .            | 241    |
| ———— c. 82 (Charging Orders) . . . . .                   | 293-5  |
| ———— c. 90 (Infant Felons) . . . . .                     | 226    |
| 5 & 6 Vict. c. 94 (Defence Act) . . . . .                | 91     |
| 6 & 7 Vict. c. 73 (Solicitors) . . . . .                 | 213-16 |
| 8 & 9 Vict. c. 18 (Lands Clauses), s. 69 . . . . .       | 57-70  |
| ———— s. 70 . . . . .                                     | 57-62  |
| ———— s. 71 . . . . .                                     | 70     |
| ———— s. 72 . . . . .                                     | 70     |
| ———— s. 73 . . . . .                                     | 71     |
| ———— s. 74 . . . . .                                     | 72     |
| ———— ss. 76-78 . . . . .                                 | 75     |
| ———— s. 79 . . . . .                                     | 76     |
| ———— s. 80 . . . . .                                     | 77-87  |
| ———— ss. 82, 83 . . . . .                                | 87     |
| ———— ss. 85, 87 . . . . .                                | 88     |
| ———— c. 70 (Church Building) . . . . .                   | 241    |
| ———— c. 118 (Inclosure) . . . . .                        | 90     |
| 9 & 10 Vict. c. 20 (Parliamentary Deposits) . . . . .    | 47, 48 |
| 10 & 11 Vict. c. 96 (Trustee Relief Act) . . . . .       | 34-44  |
| 12 & 13 Vict. c. 74 (Trustee Further Relief) . . . . .   | 34     |
| 13 & 14 Vict. c. 60 (Trustee Act, 1850) . . . . .        | 243-64 |
| ———— c. 83 (Railways Abandonment) . . . . .              | 50     |
| 15 & 16 Vict. c. 29 (Burial Act) . . . . .               | 241    |

|                                                    | PAGE                       |
|----------------------------------------------------|----------------------------|
| 15 & 16 Vict. c. 55 (Trustee Extension Act, 1852)  | 243-64                     |
| ———— c. 80 (Guardians and Maintenance), s. 16      | 306                        |
| 16 & 17 Vict. c. 70 (Lunacy Regulation Act, 1853)  | 212, 270, 271, 276-80, 284 |
| ———— c. 117 (Land Tax Redemption)                  | 143                        |
| ———— c. 134 (Burial Act)                           | 241                        |
| ———— c. 137 (Charitable Trusts Act)                | 237, 238, 242, 254         |
| 17 & 18 Vict. c. 104 (Merchant Shipping)           | 306                        |
| 18 & 19 Vict. c. 43 (Infants' Settlements)         | 227-9                      |
| 22 & 23 Vict. c. 21 (Defence Act), s. 8            | 91                         |
| ———— c. 35 (Lord St. Leonards' Act, 1859), s. 13   | 142                        |
| ———— s. 30                                         | 265                        |
| 23 & 24 Vict. c. 34 (Petitions of Right Act, 1860) | 290-2                      |
| ———— c. 38 (Lord St. Leonards' Act, 1860), s. 9    | 267                        |
| ———— s. 10                                         | 93                         |
| ———— c. 112 (Defence Act)                          | 91                         |
| ———— c. 115 (Lis pendens)                          | 310                        |
| ———— c. 124 (Ecclesiastical Leases)                | 151                        |
| ———— c. 127 (Solicitors Act, 1860)                 | 209-12                     |
| 24 & 25 Vict. c. 10 (Merchant Shipping)            | 307                        |
| 25 & 26 Vict. c. 67 (Declaration of Titles)        | 301                        |
| ———— c. 86 (Lunacy Regulation Act, 1862), s. 3     | 281                        |
| ———— s. 7                                          | 277                        |
| ———— ss. 8, 9                                      | 271                        |
| ———— s. 10                                         | 284                        |
| ———— s. 11                                         | 212, 273, 280              |
| ———— s. 12                                         | 287                        |
| ———— ss. 13, 15                                    | 288                        |
| ———— s. 16                                         | 212                        |
| ———— c. 89 (Companies Act, 1862), s. 79            | 153-8                      |
| ———— s. 80                                         | 155                        |
| ———— s. 82                                         | 153                        |
| ———— s. 86                                         | 179                        |
| ———— s. 91                                         | 153                        |
| ———— s. 145                                        | 158                        |
| ———— ss. 167, 168                                  | 188                        |
| ———— ss. 186, 159, 160                             | 198                        |
| ———— ss. 176, 177, 180, 196, 199                   | 160                        |
| ———— c. 108 (Confirmation of Sales)                | 140                        |
| 27 & 28 Vict. c. 56 (Administration), s. 5         | 28                         |
| ———— c. 112 (Judgment Debtors)                     | 148-50                     |
| ———— c. 121 (Railways Construction)                | 49                         |
| 28 & 29 Vict. c. 78 (Mortgage Debentures)          | 305                        |
| 30 & 31 Vict. c. 47 (Lis pendens)                  | 310                        |
| ———— c. 127 (Railway Companies), s. 4              | 305                        |
| ———— ss. 10-19                                     | 201-6                      |
| ———— s. 34                                         | 51                         |
| ———— c. 131 (Companies Act, 1867), ss. 9-18        | 189-97                     |
| ———— s. 40                                         | 167                        |



## TABLE OF STATUTES.

xxxiii

|                                                      | PAGE          |
|------------------------------------------------------|---------------|
| 32 & 33 Vict. c. 114 (Railways Abandonment)          | 51, 161       |
| 33 & 34 Vict. c. 28 (Solicitors' Act, 1870)          | 217           |
| ———— c. 61 (Life Assurance Companies), s. 21         | 165           |
| ———— c. 71 (National Debt Act)                       | 54-56         |
| ———— c. 78 (Tramways)                                | 52            |
| ———— c. 93 (Married Women's Property)                | 296-8         |
| ———— c. 104 (Joint Stock Companies Arrangement Act)  | 198-200       |
| 36 & 37 Vict. c. 12 (Custody of Infants)             | 224-6         |
| ———— c. 35 (County Debentures)                       | 305           |
| ———— c. 66 (Judicature Act, 1873), s. 17             | 203           |
| ———— s. 33, 42                                       | 2             |
| ———— s. 100                                          | 1             |
| 37 & 38 Vict. c. 42 (Building Societies)             | 164           |
| ———— c. 78 (Vendor & Purchaser)                      | 246, 260      |
| 38 & 39 Vict. c. 60 (Friendly Societies)             | 164           |
| ———— c. 77 (Judicature Act, 1875), s. 7              | 243           |
| ———— c. 87 (Land Transfer Act)                       | 244, 260      |
| 39 & 40 Vict. c. 45 (Industrial Societies)           | 164           |
| 40 & 41 Vict. c. 18 (Settled Estates Act, 1877) s. 2 | 97, 98        |
| ———— s. 3                                            | 96            |
| ———— s. 4                                            | 99-101        |
| ———— ss. 5-8                                         | 102           |
| ———— ss. 9-11                                        | 103           |
| ———— ss. 12-13                                       | 104           |
| ———— ss. 14, 15                                      | 106           |
| ———— s. 16                                           | 107           |
| ———— s. 17                                           | 111           |
| ———— ss. 18, 19                                      | 108           |
| ———— ss. 20-22                                       | 109, 110      |
| ———— s. 23                                           | 112           |
| ———— ss. 24, 25                                      | 116, 117      |
| ———— ss. 26, 28                                      | 118           |
| ———— ss. 27, 29                                      | 120           |
| ———— s. 30                                           | 120, 117      |
| ———— s. 31                                           | 121           |
| ———— s. 32                                           | 128           |
| ———— ss. 33-39                                       | 122-127       |
| ———— s. 40                                           | 128           |
| ———— s. 41                                           | 129           |
| ———— ss. 44, 45                                      | 96            |
| ———— s. 48                                           | 101           |
| ———— s. 49                                           | 113, 130      |
| ———— ss. 50-52                                       | 113, 132      |
| ———— ss. 53, 55                                      | 135           |
| ———— s. 54                                           | 112           |
| ———— s. 56                                           | 103           |
| ———— c. 26 (Companies Act, 1877)                     | 189-97        |
| 42 & 43 Vict. c. 78 (Central Office)                 | 221, 277, 291 |

## ADDENDA.

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- Page 65, n. (d)—*add*: “*re Stock's Estates*, W. N. (1880) 11.”  
,, 173, n. (k)—*add*: “and see *re Stewart*, W. N. (1880) 15.”  
,, 176, n. (m)—*add*: “*re Cakemore, &c. Co.*, W. N. (1880) 15.”  
,, 181, n. (y)—*add*: “and see Companies Act, 1862, s. 88, as to forwarding  
a copy to the Registrar.”  
,, 213, n. (a)—*add*: “but see Memorandum, W. N. (1880) 7.”  
,, 261, n. (d)—*add*: “*re Hartley*, W. N. (1879) 197.”

THE  
LAW AND PRACTICE  
RELATING TO  
P E T I T I O N S.

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CHAPTER I.

PETITIONS GENERALLY.

A PETITION is a statement in writing, addressed to the Definition.  
High Court of Justice or to the Lord Chancellor, showing  
some matter or cause in respect of which the petitioner  
prays the direction or order of the Court.

The procedure by petition is, subject to the Rules of Effect of Ju-  
Court, expressly preserved by the Judicature Act (a). dicature Acts.  
A petition is a "pleading" within the meaning of the  
Act (b), and is therefore subject to the Rules of Court  
with regard to pleading; though the former practice  
does not in all respects appear to have been altered in  
accordance with such Rules (c).

Petitions may be presented either in an action, or in a Presented in  
matter over which the Chancery Division or a judge action or  
thereof has jurisdiction under some Act of Parliament or matter.  
other special authority.

Petitions are either for orders of course, or for special Special or of  
orders. course.

(a) R. S. C. Ord. I. 3.

(b) Jud. Act, 1873, s. 100.

(c) For instance, the rule (Ord.  
XIX. 7), that every pleading shall  
be marked with the name and de-

scription of the solicitor or party  
delivering the same, does not ap-  
pear to be usually complied with in  
the case of petitions: Seton, 51.

Petitions for orders of course are those to which no opposition can be offered, and the order on which is made without any direct application to the judge (*d*).

Distinction  
between mo-  
tions and  
petitions.

Applications to the Court in a pending action or matter, are made either by motion or petition. There does not appear to be any very clear line of demarcation between the cases where a petition is required and the cases where a motion is necessary; but it may be laid down as a general rule, that where any long or intricate statement of facts is required, or where the order asked for is in the nature of a judgment or final order, the application should be by petition; in other cases, that is, where the facts are few and simple, or where the application is interlocutory, it should be by motion (*e*).

Division for  
which marked.

Petitions should be marked for the Chancery Division or in Lunacy, as the case may be. If marked for the Chancery Division, they should also be marked with the name of such judge thereof as the petitioner (subject to the power of transfer) may select (*f*).

Form of pe-  
tition.

A petition in the Chancery Division must be addressed to the High Court of Justice (*g*). It must be entitled in the action or matter in which it is presented. If presented in an action it must be marked with a reference to the record. If presented under the statutory jurisdiction, it must be entitled in the Act of Parliament under which it is presented, and in the matter of the particular trust, property, person, or company to which it relates (*h*). If presented under a private Act, it may be entitled in the Act alone (*i*).

(*d*) As to petitions of course, see *post*, p. 15.

(*e*) *Shipbrook v. Hinchinbrook*, 13 Ves. 394.

(*f*) Jud. Act, 1873, ss. 33, 42; R. S. C. Ord. V. 4.

(*g*) Seton, 51.

(*h*) The substantial matter is usually and more conveniently placed before the title of the Act.

(*i*) Smith's Ch. Pr. Vol. II, 229;

The petition must state by whom it is presented ; and if presented in a matter, or by a person not a party to the action, the name, residence, and description of the petitioner must be stated.

Every petition must contain as concisely as may be a statement of the material facts on which the petitioner relies, but not the evidence by which they are to be proved ; such statement should be divided into paragraphs, numbered consecutively, and each paragraph should contain as nearly as may be a separate allegation. Dates, sums, and numbers should be expressed in figures and not in words (*k*). Any matter of fact which the law presumes in the petitioner's favour, need not be stated (*l*). It is sufficient to state the effect of any document as briefly as possible, without setting out the whole or any part thereof, unless the precise words are material (*m*). In reciting previous orders the name of the judge by whom they were made should be given (*n*). The petition concludes with a prayer for the order required.

If the petition is not for an order of course, there must be written at the foot a statement of the persons intended to be served, or if no person is intended to be served a statement to that effect (*o*). Where the petition is in an action, the respondents should not be described as "plaintiffs or defendants," but their names should be given (*p*).

A petition need not be printed (*q*) ; nor need it be signed by counsel, unless it is for leave to sue *in forma pauperis* (*r*), or for the opinion of the Court under Lord

Foot note.  
Need not be printed or signed.

but see *re Bolton Estates Act*, W. N. (1878), 65.

(*k*) R. S. C. Ord. XIX. 4.

(*l*) R. S. C. Ord. XIX. 28.

(*m*) R. S. C. Ord. XIX. 24.

(*n*) *Re Gordon*, W. N. (1876), 257.

(*o*) Cons. Ord. XXXIV. 1.

(*p*) *Per M. R.*, W. N. (1876), 219 ; *Meyrick v. Lawes*, W. N. (1877), 223.

(*q*) R. S. C. Ord. XIX. 5.

(*r*) Cons. Ord. VII. 8. See Petitions of Right, *post*.

St. Leonards' Act (*s*). It is conceived that the general provision of the Judicature Act (*t*) does not affect the special reasons and provisions with regard to signing the petitions above mentioned.

**How presented.** The petition must be left with the Judge's secretary; and if it is not for an order of course it will be answered by a memorandum, written in the margin of the petition, and signed by such secretary, directing all parties concerned to attend on the next petition day; unless, upon previous application to the Judge, leave has been given to have the petition answered for an earlier day (*u*). A fair copy must be left at the same time for the use of the Judge. When the petition is answered, it is taken away, by the person presenting it (*v*).

**Who may present.** Infants, idiots, persons of unsound mind, and other persons under disability must petition by a next friend (*w*).

A lunatic must petition by the committee of his estate, if any; or if none, by a next friend (*x*).

A married woman entitled for her separate use, or where the interest of her husband is adverse, must petition by a next friend (*y*). If the husband's interest is adverse, he should be made a respondent; if he has no adverse interest, he may, it seems, be made a co-petitioner (*z*).

A petition presented on behalf of a pauper, except for the purpose of the discharge of his solicitor, must be signed by his solicitor (*a*).

As a general rule the seal of companies and corpora-

(*s*) 22 & 23 Vict. c. 35, s. 30;  
23 & 24 Vict. c. 38, s. 9; *post*.

(*t*) R. S. C. Ord. XIX. 4.

(*u*) *Anon.*, 17 Jur. 827.

(*v*) Daniell, 1454.

(*w*) *Jones v. Lewis*, 1 De G. & S. 245, 252; Daniell, 76, 83, 1452.

(*x*) Daniell, 80.

(*y*) Daniell, 102; Seton, 51.

(*z*) *Re Osborne*, W. N. (1878), 179; but see *Roberts v. Evans*, 7 Ch. D. 830; *re Croughton*, 8 Ch. D. 460; *Wall v. Rogers*, L. R. 9 Eq. 58.

(*a*) Cons. Ord. VII. 11; Daniell, 42.

ions is required to petitions asking for payment out of moneys to their secretary or other officer (b).

If the petitioner is resident out of the jurisdiction, including Scotland (c), he may be ordered to give security for costs, even though the respondent has filed affidavits (d); unless the petition is presented in a cause to which the petitioner is a party (e). A special application for this purpose is now necessary, and is usually made by summons (f). Security for costs.

As a general rule, all petitions, except those which are Service. of course, must be served upon all parties interested.

Unless the Court gives special leave to the contrary, there must be at least two clear days between the service and the hearing; and in the computation of such two clear days, Sundays and other days on which the offices are closed, except Monday and Tuesday in Easter Week, are not reckoned (g).

Service must be effected before seven in the evening, except on Saturday, when it must be made before two o'clock in the afternoon; otherwise it will be deemed to be made on the following day (h).

Service is effected by delivering to and leaving with the person served a true copy of the petition, and foot note thereto, and of the fiat or answer thereon, and at the same time showing him the original petition and answer thereto (i).

It seems that substituted service of a petition may be Substituted service.

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| <p>(b) <i>Exp. Mayor of London</i>, W. N. (1878), 238.</p> <p>(c) <i>East Llangynog Co.</i>, W. N. (1875), 81.</p> <p>(d) <i>Exp. Seidler</i>, 12 Sim. 106; <i>exp. Latta</i>, 3 De G. &amp; S. 186.</p> <p>(e) <i>Cochrane v. Fearon</i>, 18 Jur. 568 and see <i>Partington v. Rey-</i></p> | <p><i>nolds</i>, 6 W. R. 307.</p> <p>(f) R. S. C. Ord. LV. 2. See <i>Massey v. Allen</i>, 12 Ch. D. 807.</p> <p>(g) Cons. Ord. XXXIV. 2; and see R. S. C. Ord. LVII. 2, 3.</p> <p>(h) Cons. Ord. XXXVII. 2.</p> <p>(i) <i>Daniell</i>, 1455.</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

directed. Thus, where several infants were living with their mother, the Court allowed service on any one of them or on their mother to be substituted for service on them all (*j*); and where a person was resident abroad, substituted service on his solicitor was directed (*k*). The order for substituted service is obtained on an *ex parte* motion supported by affidavit; and the order directing substituted service should be served with the petition (*l*).

Service out of  
the jurisdic-  
tion.

Petitions may, by leave of the Court, be served on persons out of the jurisdiction (*m*). Such leave is obtained on an *ex parte* motion, supported by an affidavit showing where the respondents are resident, and a copy of the order directing such service should be served with the petition (*n*).

Service on a  
defendant who  
has not ap-  
peared.

If a defendant has not entered an appearance, though duly served with a writ of summons, and the time limited for so doing has not expired, it is presumed that leave to serve him with the petition must first be obtained (*o*); but the plaintiff may without special leave serve a petition upon any defendant who, having been duly served with a writ, has not appeared within the time limited for that purpose (*p*); and the petition need not, it seems, be filed (*q*).

Service on in-  
fants or insane  
persons.

When a petition is served upon an infant or person of unsound mind, a guardian *ad litem* must be appointed to act on his behalf. The application for such appoint-

(*j*) *Re Blackwood*, W. N. (1867), 114.

(*k*) *Bonelli's Telegraph Co.*, L. R. 18 Eq. 655.

(*l*) *Daniell*, 1456.

(*m*) *Shurmer v. Hodge*, W. N. (1866), 304; *Bonelli's Telegraph Co.*, L. R. 18 Eq. 655; *re Haney*, L. R. 10 Ch. 275; *British Imperial*

*Co.*, 5 Ch. D. 749; *Household Insurance Co.*, W. N. (1878), 26; *re Wycherley*, 1 L. R. Ir. 12.

(*n*) *Daniell*, 1456.

(*o*) *Ibid.*

(*p*) R. S. C. Ord. LIII. 7.

(*q*) *Whitaker v. Thurstan*, W. N. (1876), 232.



ment may be made by petition of course at the Rolls, in the name of the infant or person of unsound mind, and must be supported by affidavits, as to the fitness of the proposed guardian, and that he has no adverse interest (*r*). The affidavit should, in the case of an infant, be made by his solicitor (*s*). A co-defendant may be appointed if he has no interest (*t*); but neither the petitioner, nor a married woman, nor a person out of the jurisdiction can be appointed (*u*).

Where the person to be served is a lunatic, and his committee is the petitioner, or has an adverse interest, a guardian *ad litem* must be appointed by petition of course in manner above mentioned (*v*).

Petitions which are not of course are set down by the <sup>Setting down.</sup> secretaries to the Lord Chancellor and the Master of the Rolls; and a list thereof is sent by them to the registrar to be put in the paper (*w*).

The petitions are called on in their regular order; <sup>Hearing.</sup> the unopposed petitions being taken first. If any petitions remain undisposed of, they are placed in an adjourned list, and taken on the next petition day in priority to the opposed petitions in the new list.

Where two or more petitions are presented in [the same matter, and answered on the same day, that which is first presented is entitled to pre-audience (*x*).

It has been said that the Court will not, as a rule,

(*r*) *Re Barrington*, 27 Beav. 272; *re Greaves*, 2 W. R. 355; *re Duke of Cleveland*, 1 Dr. & S. 46; *Piddocke v. Smith*, 9 Ha. 395; *Leese v. Knight*, 10 W. R. 711; *Simmons v. Bates*, 20 L. T. 272; *re Willan*, 9 W. R. 689, n. For form of Petition, see *post*.

(*s*) *Daniell*, 146.

(*t*) *Bonfield v. Grant*, 11 W. R.

275; *Newman v. Selfe*, 11 W. R. 764; *Anon.*, 9 Ha. App. 27.

(*u*) *Anon.*, 18 Jur. 770; *Hartland v. Atcherley*, 7 Beav. 53.

(*v*) *Hartland v. Atcherley*, *supra*; *re Greaves*, 2 W. R. 355.

(*w*) *Seton*, 52.

(*x*) *Re Brookman*, 1 Mac & G. 199.

make any declaration as to the rights of the parties on a petition ; but that it will, if necessary, preface the order with a statement of its opinion (*y*). The rule is not, however, adhered to (*z*).

Default of  
appearance.

If, when the petition is called on, a respondent does not appear, an order may be made as against him, upon production of an affidavit of service. If the petitioner does not appear when the petition is called on in regular order as an opposed petition, the respondent may apply to have the petition dismissed with costs, on producing an affidavit of his having been served (*a*). The affidavit of service must be filed, at latest, before the rising of the Court on the day the order is made ; and the affidavit should be produced to the registrar (*b*).

Adjournment  
to chambers.

Where the persons interested are numerous, or the evidence complicated, or where the application is for leave for an infant ward to marry, the petition is often adjourned at once into chambers (*c*).

Where the petition is so adjourned, without any formal order being drawn up (*d*), a note, signed by the registrar, stating for what purpose the petition is adjourned, must be procured from him, and left at chambers (*e*). A copy of the note of adjournment should also be indorsed on the petition, and signed by the registrar (*f*).

Upon the note being left at chambers, a summons to proceed on the matter is taken out, and served in the usual manner ; and upon the return of the summons,

(*y*) *Sharshaw v. Gibbs*, Kay, 333, 340 ; but see *re Walker*, 16 Jur. 1154 ; *re Morgan*, 2 W. R. 439.

(*z*) Seton, 53.

(*a*) Daniell, 1458 ; Seton, 52 : but see *Exp. Lows*, 7 Ch. D. 160.

(*b*) *Milltown v. Stuart*, 8 Sim. 34.

(*c*) Daniell, 1188 ; Seton, 54.

(*d*) It seems that a formal order is necessary where fresh evidence will be required : *Kelson v. Kelson*, 9 Ha. App. 86.

(*e*) Regul. 8 Aug. 1857, r. 3.

(*f*) Seton, 54 ; Blox. 37.

directions will be given as to the manner in which the matter is to be prosecuted (*g*).

Where the evidence is satisfactory, the order is made at chambers, and a minute thereof and of the evidence adduced is written on the fold of the original petition, and signed by the chief clerk, and sent to the registrar, by whom the order is drawn up without the matter being again mentioned to the Court (*h*).

If the petition is to be brought on again to be disposed of in Court, a formal certificate will be drawn up by the chief clerk in the usual manner. If no formal certificate is required, a minute of the result of the proceedings in chambers is annexed to the Judge's copy of the petition, and sent to the Judge in Court, and a note of the evidence used will be made by the chief clerk, for the registrar, on the fold of the original petition (*i*).

Upon production of the minute of the result of the proceedings, or of an office copy of the chief clerk's certificate, and of a written request of the solicitor, the registrar will restore the petition to the paper for further hearing (*k*). Restoring to paper.

Where an unopposed petition is directed to stand over without fixing a day for it to be again put into the paper, the registrar in attendance in Court, upon the written request of the solicitor, will direct the same to be restored to the paper for the following petition day (*l*).

Notice that the petition has been restored to the paper must be given to the other persons entitled to appear upon it (*m*).

Petitions ought not to be allowed to come into the paper

(*g*) In *ex parte* or trifling cases a summons is often dispensed with; and the matter is either disposed of on the note being left, or at an appointment then made for the purpose; Daniell, 1188.

(*h*) Seton, 54; Daniell, 1189.  
 (*i*) *Ibid.*  
 (*k*) Daniell, 1189, 1458.  
 (*l*) Reg. Regul. 15 March, 1860, r. 14.  
 (*m*) Daniell, 1458.

until they are ripe for hearing. Where a petition is not ready to be heard, application should be made to the proper officer of the Court before petition day, so that it may not appear in the paper (*n*).

#### Amendment.

Leave to amend a petition is almost of course. It is generally given at the hearing, but may be obtained on a separate application to the Court or a judge in chambers (*o*). The amendment may state facts which have occurred after the presentation of the petition (*p*), or since leave to amend was given (*q*), or may introduce a new petitioner or new co-petitioners (*r*), and may, in fact, add any thing whatever (*s*).

Leave to amend has been given after the order has been pronounced (*t*), and even after it has been passed and entered (*u*).

No formal order is usually drawn up. The registrar will, if required, indorse the direction on the brief or petition as an authority to the secretary to make the amendment; but counsel's indorsement is generally sufficient (*v*).

An amended petition does not require re-answering (*w*).

#### Death of petitioner.

Where a sole petitioner died after an order made on a petition directing inquiries, and whilst the inquiries were pending, the Court ordered the petition to be continued

- (*n*) *Per* M. R., W. N. (1875), 104. v. *Wykeham*, 3 W. R. 286.  
 (*o*) R. S. C. XXVII. 6. (*t*) *Hislop* v. *Wykeham*, 3 W. R. 286; *re* *Bunnett*, 1 Jur. N. S. 921; but see *re* *Keen*, 7 W. R. 577.  
 (*p*) *Robinson* v. *Harrison*, 1 Drew. 307. (*u*) *Re* *Havelock*, 11 Jur. N. S. 906; but see *re* *Atkins*, 1 Ch. D. 82.  
 (*q*) *Re* *Westbrook*, L. R. 11 Eq. 252; *Maude* v. *Maude*, 5 De G. & S. 418. (*v*) *Seton*, 52.  
 (*r*) *Re* *Cartwright*, 8 W. R. 492; *re* *Wilkinson*, L. R. 9 Eq. 71; *re* *Cartwright*, 8 W. R. 492; *Maude* v. *Maude*, 5 De G. & S. 418; *Robinson* v. *Harrison*, *supra*. (*w*) *Re* *Medow*, 10 Jur. N. S. 536;  
 (*s*) *Re* *Westbrook*, L. R. 11 Eq. 252, *per* V.-C. M.; and see *Hislop*

and carried on by the representatives of the petitioner (x). A similar order was made where the sole petitioner died before the hearing of a winding-up petition (y).

Petitions are transferred from one judge of the Chan- Transfer.  
cery Division to another by an order of the Lord Chancellor (z); and the Court of Appeal has no longer jurisdiction to order a transfer (a).

The order made upon a petition is drawn up, passed, Order.  
and entered in the usual manner. At the time it is bespoken, the original petition, and counsel's brief, with his endorsement of the order made, and any judgment, order, or the office copy of any certificate, on which the petition is founded, and office copies of any affidavits, and any exhibits or other evidence used at the hearing, must be left with the registrar; and if a fund in court is to be dealt with, the Chancery Paymaster's certificate of the fund must also be left (b).

Before the order is passed, the original petition must be Filing peti-  
tion.  
filed in the report office, and a note thereof made on the order by the clerk of reports (c). Where the original petition was lost or was not obtainable, a copy was allowed to be filed instead of the original petition (d).

Upon any petition evidence may be given by affidavit; Evidence.  
but the Court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit (e).

- (x) *Re Atkins*, 1 Ch. D. 82.
- (y) *Dynevor Duffryn Co.*, W. N. (1878), 199.
- (z) R. S. C. Ord. LL.; *re Boyd*, 1 Ch. D. 12.
- (a) *Re Hutley*, 1 Ch. D. 11.
- (b) Reg. Regul. 15 March, 1860, rr. 16, 32.
- (c) Cons. Ord. XXIII. 23.
- (d) *Sanderson v. Walker*, 1 M.

- & C. 359; *Smith v. Harwood*, 1 Sm. & G. 137; *Andrews v. Walton*, 1 M. & C. 360; *re Devonshire*, 32 Beav. 241; *re Anglo-Greek Co.*, 35 Beav. 419.
- (e) R. S. C. Ord. XXXVII. 2. As to affidavits by marksmen, see *Fernyhough v. Naylor*, W. N. (1875), 22.

Affidavits must be confined to such facts as the witness is able of his own knowledge to prove. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same (*f*).

The Court or a judge may direct the depositions of a witness to be taken before an examiner (*g*).

A petitioner who intends to use affidavits previously filed in the cause, should give notice thereof to the respondents (*h*).

Where the title of a petition is amended, the affidavits need not be resworn, but may be made evidence on the amended petition by a short affidavit referring to them and making them exhibits (*i*). But where the variation between the title of the affidavits and the title of the petition is not material, the affidavits will be received as they are (*j*).

Affidavits in support of a petition for payment out, sworn before the petition is presented, but after the payment into Court, will be admitted as evidence (*k*).

Affidavits filed in a suit may be read on the hearing of a petition presented subsequently and on a different part of the case (*l*); but notice should be given to the respondents (*m*).

Costs.

The costs of and incidental to all proceedings in the High Court are now in the discretion of the Court; but

(*f*) R. S. C. Ord. XXXVII. r. 3.

(*g*) *Ibid.*, r. 4.

(*h*) Seton, 53\*. As to using affidavits filed in another matter, see *re Woolley*, 24 W. R. 783.

(*i*) *Re Varteg Chapel*, 10 Ha. App. 37; and see *Pearson v. Wilcox*, 10 Ha. App. 35.

(*j*) *Re Harris*, 8 Jur. N. S. 166;

and see *Fisher v. Coffey*, 1 Jur. N. S. 956.

(*k*) *Re Varley*, 14 W. R. 98; *re Gombault*, W. N. (1868), 243.

(*l*) *Re Turnbull*, 17 Jur. 851; *re Pickance*, 10 Ha. App. 35; and see *re Woolley*, 24 W. R. 783.

(*m*) Seton, 53.

the Judicature Act does not deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules formerly acted upon in the Courts of Equity (*n*).

It has been held that the effect of the above section is to repeal all previous enactments directing costs to follow certain rules (*o*); and it seems that this decision applies to express provisions as to costs under the statutory jurisdiction of the old Court of Chancery (*p*).

Where a person, though properly served, is not affected by the petition, the proper course is to tender such person, at the time of service, the costs of obtaining the advice of his solicitor whether he should appear or not, and to give him notice that if he appear his costs will be objected to (*q*).

The amount of such tender shall be £2 2s., which will be allowed the party making such payment, provided such service was proper, but not otherwise (*r*).

The above rule is without prejudice to the rights of either party to costs, or to object to costs, where no such tender is made, or where the Court or judge shall consider the party entitled, notwithstanding such notice or tender, to appear in court (*s*).

In any other case in which a solicitor of a party served, necessarily or properly peruses any such petition without appearing thereon, he is to be allowed a fee not exceeding £2 2s. (*t*).

Where any party appears upon a petition in which he

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| ( <i>n</i> ) R. S. C. Ord. LV.                    | Ch. 328; and see <i>Wood v. Boucher</i> ,              |
| ( <i>o</i> ) <i>Garnett v. Bradley</i> , 3 App.   | L. R. 6 Ch. 77.                                        |
| Cas. 944.                                         | ( <i>r</i> ) Add. Rules, 1875, (Spec. All.)            |
| ( <i>p</i> ) <i>Mercers' Co.</i> , 10 Ch. D. 481; | r. 17.                                                 |
| but see <i>Nock v. Nock</i> , W. N. (1879),       | ( <i>s</i> ) <i>Ibid.</i> See <i>Wood v. Boucher</i> , |
| 125.                                              | L. R. 6 Ch. 77.                                        |
| ( <i>q</i> ) <i>Re Gore Langton</i> , L. R. 10    | ( <i>t</i> ) <i>Ibid.</i>                              |

is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance, unless the Court or judge expressly direct such costs to be allowed (*u*).

Where a person is about to present a petition and there are other persons who can be properly made co-petitioners, he should apply to them to join in the petition, otherwise he may be ordered to pay the costs of such persons if made respondents (*v*).

Two petitions      Where two petitions are *bonâ fide* presented for the same object by different parties, the costs of both will be allowed; but where it is known that a petition has been presented, the costs of a subsequent petition for the same purpose will not be allowed (*w*). Where two petitions were presented by the same petitioners for payment out of two sums paid in to different accounts by a railway company, it was held that the two petitions might have been included in one, and the costs of two petitions were not allowed (*x*).

Appeals.      All appeals to the Court of Appeal are now brought by notice of motion, and no petition is now necessary (*y*). The Court of Appeal has now no jurisdiction to hear petitions except on appeal (*z*).

The time within which an appeal from an order on petition must be brought is, unless by special leave, twenty-one days (*a*).

The twenty-one days are calculated from the time at

(*u*) Add. Rules, 1875, (Spec. All.)  
r. 21. See *Clark v. Simpson*, L. R.  
6 Eq. 336.

(*v*) *Melling v. Bird*, 17 Jur. 155;  
*re Osborne*, W. N. (1878), 179.

(*w*) *Re Chaplin*, 33 L. J. Ch. 183;  
*re Saville*, 14 W. R. 603; *re British*  
*Gas Co.*, 13 W. R. 649, but see

*re Pring*, 28 L. T. N. S. 467.

(*x*) *Re Pattison*, 4 Ch. D. 207.

(*y*) R. S. C. Ord. LVIII. 2.

(*z*) *Re Dunraven Coal Co.*, 24  
W. R. 37.

(*a*) R. S. C. Ord. LVIII. 9, 15;  
*National Funds Ass. Co.*, 4 Ch. D.  
305; *re Baillie*, 4 Ch. D. 785.



which the judgment or order is signed, entered, or otherwise perfected; or in case of the refusal of an application, from the date of such refusal (*b*).

Where a petitioner applied for payment out of a fund, his title to a moiety of which was not disputed, and the Court below ordered payment to him of one moiety only, it was held that an appeal from this order was not an appeal from the refusal of an application, but only an appeal from an order with which the petitioner was dissatisfied, and that the time for appealing did not therefore begin to run until the order was drawn up (*c*).

Petitions of appeal and petitions for a rehearing are now obsolete. All appeals to the Court of Appeal, as we have already seen, are now brought by notice of motion; and a judge of the High Court has no longer any jurisdiction to rehear an order made by himself or any other judge (*d*).

Petition for re-hearing.

Orders of course may be made by any judge of the Chancery Division, but as such orders can be obtained more easily and more inexpensively upon petition to the Master of the Rolls it has become the general practice to obtain such orders, even in causes or matters attached to other branches of the court, upon petition at the Rolls.

Petitions of course.

The practice at the Rolls is as follows:—Upon the petition being presented, one of the secretaries of the Master of the Rolls will, instead of answering such petition, draw up the order thereon in such form as the Master of the Rolls shall from time to time direct, and will sign such order, as passed, with his initials; the under-secretary will then enter or cause to be entered such order in a book kept at the secretary's office at the Rolls for that purpose, and will then mark and sign such order with his initials.

(*b*) R. S. C. Ord. LVIII. 15.

(*c*) *Re Michell*, 9 Ch. D. 5.

(*d*) *Re St. Nazaire Co.*, 12 Ch. D. 88.

as entered; and every order so made shall have the same force and effect as orders of course passed by the registrars (*e*).

The suitors of the court and their solicitors can have access to the book during office hours without payment of any fee (*f*).

No service or notice of the application is necessary in the case of petitions of course (*g*).

A party applying for an order of course is bound to state fully and truly all the material facts upon which the application is made. If the order is irregularly obtained, or material facts are misrepresented or suppressed, it may be discharged on special application by motion (*h*); and where an order of course has been obtained, and it appears that, though irregularly obtained as an *ex parte* order, it could be sustained on the merits, the Court must nevertheless discharge the order, leaving the party to make an application on the merits (*i*).

The application to discharge should be made without delay (*j*), and should be made to the judge, to whom special applications, in the cause or matter in which such order is made, ought to be made (*k*). A party, who has served, and proceeded on, an irregular order of course, is not at liberty to abandon it on tender of costs; and until

(*e*) Cons. Ord. XLI. 17. For applications which can be made by petition of course, see *post*.

(*f*) Cons. Ord. XLI. 17.

(*g*) *Eyles v. Ward*, Mos. 255.

(*h*) *Victor v. Devereux*, 6 Beav. 584; *Hertford v. Suisse*, 7 Beav. 160; *Holecombe v. Antrobus*, 8 Beav. 405; *Wilkin v. Nainby*, 8 Beav. 465; *De Feucheres v. Dawes*, 11 Beav. 46; *Wyllie v. Ellice*, 11 Beav. 105; *re Winterbottom*, 15

Beav. 80.

(*i*) *Harris v. Start*, 4 My. & Cr. 261; *Brookes v. Purton*, 4 Beav. 494; *Victor v. Devereux*, 6 Beav. 584; *Brignall v. Whitehead*, 30 Beav. 229.

(*j*) *Tarback v. Tarback*, 4 Beav. 149; *re Wavell*, 22 Beav. 634.

(*k*) Cons. Ord. VI. 10; *Cooper v. Knox*, 15 Beav. 102; *re Bell*, 2 H. & M. 501.

discharged in regular course, no order to the same effect can be obtained (*l*).

An order of course should be served as soon as possible ; for an order of course is no order until it is served. If, therefore, the other party take any step before the order is served, that step, being in itself regular, the order which has been obtained, and not served, cannot afterwards be acted upon, if it will interfere with the step so taken (*m*).

After service, an order of course cannot be amended, and subsequently reserved, so as to make the amended order, served after the time, regular (*n*).

In some cases where the application would otherwise be special, an order of course can be obtained, if the opposite party consent thereto. The consent must be signed by the solicitor at the foot of the petition, before it is presented (*o*). Order of course  
by consent.

(*l*) *Pearce v. Gray*, 4 Beav. 127. 41, 44.

(*m*) *Church v. Marsh*, 2 Ha. 652.

(*n*) *Wool v. Townley*, 9 Beav.

(*o*) *Daniell*, 2002, n. See *post*.

## CHAPTER II.

### TRANSFERS AND PAYMENT OUT GENERALLY.

Application,  
how made.

AN application for payment, transfer, or delivery, out of Court, or for transfer from one account to another, is usually made by petition.

It may, however, be made by summons where leave to apply at chambers has been expressly given (*a*); or where the fund is very small (*b*); or where the application is only for payment of the dividends or interest on any stocks, funds, or securities standing to the credit of any cause or matter depending to the separate account of the applicant (*c*); or where the application deals only with the interest of money on deposit (*d*); or is merely for an allowance of income, *pendente lite* (*e*).

Title and form  
of petition.

The petition should be intituled in the cause or matter (but not in any separate account therein), to the credit of which the fund is standing (*f*); and where the petition is in a cause, it should be marked with a reference to the record (*g*). The persons to whom payment is directed should be described by name, and not merely as plaintiffs,

(*a*) Daniell, 1649.

(*b*) Daniell, 1649; but see *Petty v. Petty*, 12 Beav. 170.

(*c*) Cons. Ord. XXXV. 1. A petition is necessary for payment of large arrears of interest; *Joad v. Ripley*, 3 Jur. N. S. 432; but see Daniell, 1649, n. (*t*).

(*d*) Ch. Funds Amended Orders, 1874, r. 13.

(*e*) *Bentley v. Craven*, 1 W. R. 362.

(*f*) Ch. Funds Rules, 1874, r. 7. For form of petition, see *post*.

(*g*) Ch. Funds Amended Orders, 1874, r. 17.

or petitioners, unless they are trustees, or other persons in succession, or representatives when no probate or administration has been taken out at the date of the order or certificate (*h*). The exact title of the cause or matter, and separate account (if any), to the credit of which the fund is standing, should be stated in the body of the petition (*i*); and the petition should also state whether legacy or succession duty has or has not been paid (*k*). The exact amount of the fund and interest should, when practicable, be stated (*l*); and directions, when practicable, should be expressed by reference to a schedule (*m*). If the cause or matter, to the credit of which the fund is standing, has been placed on the list of funds undealt with for fifteen years (*n*), the fact must be stated in the petition; and if the fund amounts to £500, the official solicitor of the Court must be served (*o*).

The petition must be served on all the parties to the Service. action; or, if the fund is standing to a separate account, on all the persons appearing by the heading of the account to be interested therein (*p*). Where, however, the persons interested in remainder were very numerous, and it was to be supposed that they would be informed of what was done, service of a petition for carrying over their shares was dispensed with upon them (*q*). Where the shares of the persons entitled to a fund standing to a separate account had been ascertained by the master in a former stage of the cause, the transfer of one of the shares was

(*h*) Ch. Funds Rules, 1874, rr. 12, 53.

(*i*) Ch. Funds Rules, 1874, r. 7.

(*k*) Ch. Funds Amended Orders, 1874, r. 11; and see Ch. Funds Rules, 1874, rr. 14, 57.

(*l*) Ch. Funds Rules, 1874, rr. 8, 10, 13, 42.

(*m*) Ch. Funds Rules, 1874, r. 9.

(*n*) Ch. Funds Rules, 1874, r. 91.

(*o*) Ch. Funds Amended Orders, 1874, r. 14; but see *re Stanhope*, 25 W. R. 601, where service was dispensed with.

(*p*) Daniell, 1649.

(*q*) *Re Hodges*, 6 W. R. 487.

ordered without serving the persons entitled to the other shares (*r*). A petition for the transfer of Bank annuities into India stock need not be served on contingent remaindemen (*s*). Where the fund has been assigned, the assignor must be served (*t*); but if the assignment is disputed, the fund will not be paid out on petition (*u*). Where it is necessary to serve a person, but it is unnecessary that he should appear at the hearing, notice should be given to him that his costs of appearance will be objected to, accompanied by a tender of 42s. for costs (*x*). Where a fund exceeding £500 has been placed upon the list of funds which have not been dealt with for fifteen years, the official solicitor of the Court must be served (*y*); but the Court will dispense with such service in a clear case (*z*). Until a fund is carried to a separate account the representative of the deceased person whose estate is being administered is a necessary party to any application respecting it (*a*). A petition by a married woman for payment out of a fund to which she is entitled for her separate use should be served on the husband (*b*).

Retaining part  
of fund in  
court.

Where a person is absolutely entitled, the Court will not, as a general rule, permit the fund to remain in Court and make an order for payment of interest only (*c*); but this has been done where the fund belonged to a married woman (*d*).

Petitioner one  
of a class.

Where the petitioner is one of a class, among which

- |                                                                                |                                                         |
|--------------------------------------------------------------------------------|---------------------------------------------------------|
| ( <i>r</i> ) <i>Lambert v. Newark</i> , 3 De G. & S. 405.                      | 1874, r. 14.                                            |
| ( <i>s</i> ) <i>Re Price</i> , W. N. (1872), 159; and see <i>post</i> , p. 94. | ( <i>z</i> ) <i>Re Stanhope</i> , 25 W. R. 601.         |
| ( <i>t</i> ) <i>Briant v. Dennett</i> , 4 Drew. 550.                           | ( <i>a</i> ) <i>Salmon v. Anderson</i> , 9 Beav. 445-9. |
| ( <i>u</i> ) <i>Wastell v. Leslie</i> , 15 Sim. 453, n.                        | ( <i>b</i> ) <i>Re Croughton</i> , 8 Ch. D. 460.        |
| ( <i>x</i> ) <i>Ante</i> , p. 13.                                              | ( <i>c</i> ) <i>Isaac v. Gompertz</i> , 1 Ves. jun. 43. |
| ( <i>y</i> ) Ch. Funds Amended Orders,                                         | ( <i>d</i> ) <i>Re Craddock</i> , W. N. (1875), 187.    |

the fund is divisible, the petition should ask that the other shares may be carried over to separate accounts, in order to save the expense of service on future applications (e).

Payment out of the assets of a testator will not be ordered until the rights have been ascertained by taking accounts, or the executor undertakes the responsibility (f). Payment out before fund is clear.

A fund may be ordered to be transferred from one cause to another upon a petition or summons entitled only in the former cause (g). Transfer from one cause to another.

A fund may be transferred to the Court of Chancery in Ireland (h), or to the Palatine Court of Lancaster (i).

Where four persons were absolutely entitled to a fund carried over to a separate account in a suit, and one of such persons was also entitled to a fund standing to his separate account in another suit, an order for payment out of both sums was made upon one petition instituted in both suits (k). One petition for payment of two funds.

A prospective order for payment of interest on a fund to be subsequently paid into Court has been made (l); but the Court has refused to make an order dealing prospectively with the purchase-money of an estate contracted to be sold, but not paid for (m). The Court will also, where necessary, provide for the payment of an annuity by directing prospective sales from time to time of so much of the fund as is necessary to raise the annuity (n). Order for prospective payment.

(e) *Re Hawke*, 18 Jur. 33; *re Tillstone*, 9 Hare, App. 59.

(f) *Abby v. Gilford*, 11 Beav. 28; *Knight v. Knight*, 16 Beav. 358.

(g) *Weeding v. Weeding*, 1 J. & H. 424.

(h) *Vaughan v. Headfort*, L. R. 15 Eq. 173; where form of order is given.

(i) *Seton*, 99.

(k) *Greenwood v. Greenwood*, 25 W. R. 316; and see *re Pattison*, 4 Ch. D. 207.

(l) *Re Chamberlain*, 22 Beav. 286.

(m) *Re Bowes*, 12 W. R. 569.

(n) *Lambie v. Lambie*, 9 Hare, App. 84.

Where a fund was standing to the account of an infant who would attain his majority in the long vacation, a prospective order was made for payment to him when he should come of age (o).

Married  
women.

Payment out of a fund belonging to a married woman will not be ordered except upon her separate examination (p), unless the fund is under £500 (q), or £50 a year (r); and an affidavit of no settlement is required, unless the fund is very small (s); or if there is a settlement, the Court must be satisfied that it does not affect the fund proposed to be paid out (t).

Separate  
estate.

Where the wife is entitled to her separate use, her examination is unnecessary (u); but an affidavit of no settlement is required (x). But according to the usual practice where the fund is the wife's separate property, the petition should be by her alone, with a next friend, and payment should be to her, on her separate receipt (y). A sum of cash will be paid out, though there is a restraint on anticipation (z).

When examina-  
tion will not  
be taken.

The examination will not be taken where the wife is under twenty-one (a); or where she is a ward of Court, and has married without its sanction (b); or where her

(o) *Fielden v. Hornby*, W. N. (1870), 213.

(p) *Beaumont v. Carter*, 32 Beav. 586; *Gibbons v. Kibbey*, 10 W. R. 55; *Maue v. Heaviside*, 9 W. R. 649; *Milnes v. Busk*, 2 Ves. jun. 488; and see *re Swan*, 2 H. & M. 34; *Seton*, 666.

(q) *Re Morton*, 31 L. T. N. S. 82; *Seton*, 668; *Elswoorthy v. Wickstead*, 1 J. & W. 69; *Roberts v. Collett*, 1 Sm. & G. 138; but see *White v. Herrick*, L. R. 4 Ch. 345.

(r) *Veal v. Veal*, L. R. 4 Eq. 115.

(s) *Post*, p. 30.

(t) *Post*, p. 30.

(u) *Daniell*, 94; *Macq. H. & W.* 381; *re Crump*, 34 Beav. 570; but see *Wordsworth v. Dayrell*, 4 W. R. 689.

(x) *Anon.*, 3 Jur N. S. 839.

(y) *Seton*, 667; *re Croughton*, 8 Ch. D. 460.

(z) *Re Croughton*, 8 Ch. D. 460.

(a) *Stubbs v. Sargon*, 2 Beav. 496; *Abraham v. Newcombe*, 12 Sim. 566.

(b) *Stackpole v. Beaumont*, 3 Ves. 89; *Gynn v. Gilbard*, 1 Dr. & S. 356.



interest is one which she cannot dispose of (c); or where there are circumstances of fraud or compulsion by the husband (d).

Before taking the examination, the amount of the fund must be ascertained (e); but it need not be shown what will be the amount after payment of costs (f); though the examination refers to the residue after such payment (g). Amount must be ascertained.

Where a wife is resident abroad, a commission will be ordered to take her separate examination (h). Examination abroad.

A fund representing realty belonging to a married woman may be paid out to her, without deed acknowledged, on her electing, by examination in Court, to take the money as personalty (i). But where the fund was very small (less than £50), both examination and deed acknowledged were dispensed with (k). Acknowledged deed.

Where a woman had been deserted by her husband for more than twenty years, payment out was ordered to her as if she were a *feme sole* (l); and similar orders have been made where the wife had obtained a judicial separation (m), or a protection order (n).

The consent of a wife to the transfer to her husband may be retracted at any time before the transfer is completed (o).

Where a woman is absolutely entitled to a fund in the Past child-bearing.

(c) Seton, 667.

(d) *Wright v. Rutter*, 2 Ves. jun. 673; *Willats v. Cay*, 2 Atk. 68.

(e) *Moss v. Dunlop*, 8 W. R. 39; *Sperling v. Rochfort*, 8 Ves. 180.

(f) *Packer v. Packer*, 1 Coll. 92.

(g) *Musgrove v. Flood*, 1 Jur. N. S. 1086.

(h) *Ireland v. Trembath*, 14 W. R. 275; *Gibbons v. Kibbey*, 7 Jur. N. S. 1298; but see *re Swift*, W. N. (1872), 195.

(i) *Standerling v. Hall*, 11 Ch. D. 652; *re Robin*, W. N. (1879), 95; but see *re Belt*, 25 W. R. 901.

(k) *Knapping v. Tomlinson*, 18 W. R. 684; *re Clarke*, 13 W. R. 401.

(l) *Re Pope*, 21 W. R. 646.

(m) *Re Insole*, L. R. 1 Eq. 470.

(n) *Re Raindon*, 7 W. R. 184; but see *re Dundas*, 22 W. R. 676.

(o) *Penfold v. Mould*, L. R. 4 Eq. 562.

event of her having no children, it will be paid out to her when she is past child-bearing. As a general rule, a woman will be considered past child-bearing when she is over fifty, and is unmarried, or has been long married and has never had any children or has not for many years had children (*p*). But when there are special circumstances, as, for instance, where a woman, though fifty-four and childless, has only been married three years, the Court will not order payment out (*q*). On the other hand, the Court has, under special circumstances, ordered payment out to a woman who was only forty-seven (*r*).

When a wife is entitled as administratrix or executrix, payment is directed "to B., the wife of A., as the legal personal representative of C. deceased;" but the Chancery Paymaster requires the husband to join in the receipt (*s*).

Where payment is directed to a woman, she must be described as "spinster," or "the wife of, &c.," or "widow" (*t*).

Woman marrying after date of the order.

When money or securities in Court are directed to be paid or transferred to a woman, who is unmarried at the date of the order, but who marries before payment or transfer, such money, if it does not exceed £200, or £10 per annum, or such securities, if they, or the aggregate of such securities and money, do not exceed £200 sterling, may be paid or transferred to such woman and her husband, upon proof of the marriage, and upon an affidavit of no settlement; or in case there is a settlement, then upon an affidavit of such woman and her husband, identifying such settlement, and stating that no other settlement has been made, and an affidavit by her solicitor

(*p*) *Re Widdow*, L. R. 11 Eq. 388.

408; *re Millner*, L. R. 14 Eq. 245;

*re Allason*, 36 L. T. N. S. 653;

*Archer v. Dowsing*, W. N. (1879),

43.

(*q*) *Croxtan v. May*, 9 Ch. D.

(*r*) *Re Summers*, 22 W. R. 639

and see *re Millner*, L. R. 14 Eq.

245.

(*s*) *Seton*, 669, 670.

(*t*) *Seton*, 91.

that the fund is not affected by such settlement; and upon proof of the marriage and production of such affidavits, the registrar may issue a certificate authorising the transfer to such woman and her husband (*u*).

Where the fund belongs to a corporation sole, the dividends will be ordered to be paid to the holder of the office for the time being (*x*); and, in the case of a corporation aggregate, will be paid to the treasurer or other officer to whom the money is properly payable, on an affidavit that he sustains that character (*y*), or to any person named in the petition, if the petition is sealed with the common seal, and no power of attorney or verification of the seal is necessary (*z*). Such dividends, however, are usually received under a power of attorney executed by the corporation (*a*).

The Court refused to pay out a fund to a person who was deaf, dumb, and blind, but directed the income to be paid to two persons, on an undertaking to apply it as the Court should direct (*b*). Where the person entitled is of unsound mind, payment out of interest will be ordered to the next friend, upon his undertaking to support the person of unsound mind (*c*).

The dividends of a fund belonging to an infant domiciled abroad has been ordered to be paid to her father, as guardian (*d*); and a similar order has been made with respect to corpus (*e*); and where a married woman domi-

(*u*) Ch. Funds Rules, 1874, r. 52.

(*x*) *Exp. Archbp. of Canterbury*, 2 De G. & S. 365; Seton, 89.

(*y*) Daniell, 1654; Seton, 89.

(*z*) *Exp. London, Chatham, &c.*, 8 W. R. 636; *re Dartmouth, &c.*, 9 W. R. 609; but see *exp. Corp. of London*, W. N. (1878), 238.

(*a*) Seton, 92.

(*b*) *Re Biddulph*, 5 De G. & S. 469.

(*c*) *Re Perry*, W. N. (1875), 17; *re Whitby*, W. N. (1877), 208; *re Dixon*, W. N. (1879), 57; *Steed v. Calley*, 2 M. & K. 52; *Edwards v. Abrey*, 2 Ph. 37; *re Spiller*, 6 Jur. N. S. 386; *re Bligh*, 12 Ch. D. 364; and see *post*, p. 37.

(*d*) *Re Morrison*, 16 Sim. 42.

(*e*) *Re Brown*, 13 W. R. 677; but see *re Hellman*, L. R. 2 Eq. 363.

ciled abroad was entitled, the fund was ordered to be paid to her husband's attorney (*f*).

**Trustees.**

A fund will not be ordered to be paid out to a sole trustee, except on the consent of all parties beneficially interested (*g*). But payment of *interest* will be directed to trustees, or any two of them, or even to any one of them (*h*); and under this form of order any one trustee can receive the dividends until all have ceased to be trustees, without any proof of survivorship (*i*). Though payment of dividends to trustees for the time being has in some cases been directed (*k*), this is not the usual or proper form of order in the case of *private* trusts (*l*). But in the case of charity trustees payment of dividends may be ordered to the trustees for the time being or any two of them (*m*); and it seems that the sanction of the Charity Commissioners is not necessary to a petition for payment out of a fund belonging to a charity (*n*).

**Tenant in tail.**

The Court will not order payment out to a tenant in tail unless a disentailing deed has been properly executed (*o*).

**Successive  
life interests.**

Where several persons are entitled for life in succession, the Court usually only directs payment to the first for life with liberty to apply on his death, when a further order

(*f*) *Re Swift*, W. N. (1872), 195.

(*g*) *Re Roberts*, 9 W. R. 758; *Grant v. Grant*, 6 N. R. 347; but see *re Courts of Justice*, W. N. (1867), 148.

(*h*) *Re Clinton*, 8 W. R. 492; *re Coulson*, W. N. (1867), 233; *re Pryor*, W. N. (1876), 141; and see *Clark v. Fennick*, 21 W. R. 320.

(*i*) Seton, 88; Daniell, 1652.

(*k*) *Re Pryor*, W. N. (1876), 141; *re Metropolitan Rly.*, W. N. (1876), 245.

(*l*) Seton, 88, 89.

(*m*) *A.-G. v. Brickdale*, 8 Beav. 223; *exp. Shrewsbury Hos.* 9 Ha. App. 45; *Milne v. Gilbert*, W. N. (1875), 128.

(*n*) *Re Lister*, 6 D. M. & G. 184; *re St. Giles*, 25 Beav. 313; *Holme v. Guy*, 5 Ch. D. 901; but see *re Faversham*, 10 W. R. 291; *re Popular School*, 8 Ch. D. 543.

(*o*) *Re Reynolds*, 3 Ch. D. 61; and see *post*, p. 69.

must be obtained (*p*); but if husband and wife are so entitled, payment will be directed to them in succession, and payment will be continued to the survivor, on proof, by affidavit, to the Chancery Paymaster, of the death of the other (*q*). On the death of a tenant for life, any dividends due at his death will, upon proof of death, be payable to his legal personal representatives, without any direction in the order (*r*).

When money in Court is directed to be paid to persons Partners. described in the order, or in a certificate, as co-partners, it may be paid to any one or more of such co-partners (*s*); and if any of such co-partners die before payment, it may, upon proof of death, be paid to the survivors or survivor of them (*t*).

Where a fund is payable to a person entitled to it as personalty in his own right, it may, unless the order otherwise directs, on proof of his death, whether on or after the date of such order, be paid or transferred to his legal personal representatives or to the survivors or survivor of them (*u*); but the fund will not be paid or transferred under this rule to representatives under a probate or letters of administration granted more than six years from the date of the order, or in case the fund consists of interest, from the last receipt of such interest (*x*); and where the fund is payable to persons as legal personal representatives, it will, upon proof of death, be paid or transferred to the survivors or survivor of them (*y*).

(*p*) *Seton*, 92; *Scrivener v. Smith*, L. R. 8 Eq. 310; *re Jolliffe*, L. R. 9 Eq. 668; but see *re How*, 15 Jur. 266; *re Brent*, 8 W. R. 270.

(*q*) *Daniell*, 1652; *re How*, 15 Jur. 266.

(*r*) Ch. Funds Rules, 1874, r. 53.

(*s*) *Ibid.*, r. 53.

(*t*) *Ibid.*, r. 54.

(*u*) Ch. Funds Rules, 1874, rr. 53, 55.

(*x*) *Ibid.*, r. 56; see *Edwards v. Harvey*, 11 W. R. 330.

(*y*) *Ibid.*, rr. 54, 55; but see *Jefferys v. Smith*, 11 W. R. 479; where they were also trustees.

Payment to personal representatives.

A fund will not be ordered to be paid out to an administrator *ad litem* (z); nor to a representative appointed under 15 & 16 Vict. c. 86, s. 44 (a); nor to a personal representative constituted under a foreign probate (b).

Small sums. Small sums have been ordered to be paid out to next of kin, without letters of administration (c).

A small fund belonging to an infant has, under special circumstances, been ordered to be paid to its father (d).

Fund belonging to Crown. A fund payable to the Crown will be ordered to be paid to such persons as the Sovereign may by sign manual appoint (e).

Payment out on undertaking. If the fund is small, or the amount payable to each person does not exceed £10, the Court will order payment out to the solicitor, or one of the parties, on his undertaking to distribute the fund among the persons entitled thereto (f); but the written authority of the persons interested is necessary (g), and the signatures to the authority should be verified by affidavit (h).

Powers of attorney. The Court will order payment out to a person properly authorised, by power of attorney, to receive the specific fund in question; but the due execution of the power must be proved (i), and if any considerable time has

(z) *Williams v. Allen*, 32 Beav. 340.  
650.

(a) *Byam v. Sutton*, 19 Beav. 646.

(b) *Lasseur v. Tyrconnel*, 10 Beav. 28.

(c) *Hinings v. Hinings*, 2 H. & M. 32; *re Jones*, W. N. (1866), 65; and see *re Ranking*, L. R. 6 Eq. 601; and 27 & 28 Vict. c. 56, s. 5.

(d) *Walsh v. Walsh*, 1 Drew. 64, and see *re Morrison*, 16 Sim. 42.

(e) *Tomkins v. Lane*, 2 W. R.

(f) *Brandling v. Humble*, Jac. 48; cf. *Petty v. Petty*, 12 Beav. 170. The Court will see that the fund is properly applied: *Sirdefield v. Thacker*, 18 Beav. 588.

(g) *Kelsall v. Minton*, 2 Beav. 361; *Anon.*, 5 Jur. N. S. 385; but the authority may be dispensed with: *Staines v. Giffard*, 20 Beav. 484; *Mansfield v. Green*, W. N. (1866), 220.

(h) *Downing v. Picken*, Kay, App. 1.

(i) As to evidence of execution,

elapsed, an affidavit that the power is still in force is necessary (*k*). The application ought perhaps strictly to be by the attorney as well as by the party (*l*). A general power of attorney will not as a rule enable a solicitor to apply for payment out (*m*).

Where a pauper lunatic is entitled to a fund in Court, <sup>Pauper lunatics.</sup> the treasurer of a county, guardians of the poor, or overseers of a parish, may apply by petition to the Chancery Division for payment out of past or future maintenance (*n*). Such payment may be ordered out of income or corpus, and has been made for the past maintenance of the pauper lunatic, his wife, and child (*o*). The Court has, however, a discretion to refuse payment (*p*); and where there is also a claim for past maintenance by relations, such claim will be preferred (*q*). The jurisdiction to direct such payment for maintenance ceases on the death of the lunatic (*r*).

The petitioner must prove his title to the fund, unless <sup>Evidence.</sup> it is shown by the Chief Clerk's certificate or by previous orders of the Court. The Chancery Paymaster's certificate of the fund in Court must also be obtained, and left with the Registrar when the order is bespoken (*s*). If the funds are restrained by any order, the restraining order, or an office copy thereof, must also be left; and if payment is ordered to personal representatives, the probate or letters of administration, or an official copy of the grant thereof,

see Daniell, 1666; Seton, 103, 104.

(*k*) *Bailey v. Collett*, 18 Beav. 179.

(*l*) *Fell v. Jones*, 17 Beav. 521.

(*m*) *Waddilove v. Taylor*, 13 Jur. 1023; but see *exp. De Beaumont*, 13 Jur. 354; *Carr v. Eastabrook*, 2 Cox, 390.

(*n*) *Re Upfull*, 3 Mac. & G. 281; *re Ward*, 2 W. R. 406; *re Buckley*,

*Johns*. 700; *re Baker*, L. R. 13 Eq. 168; *re Phelps*, 28 L. T. N. S. 350.

(*o*) *Re Drewery*, 2 W. R. 436; Seton, 1517.

(*p*) *Re Coleman*, 14 L. T. N. S. 587.

(*q*) *Re Gibson*, L. R. 7 Ch. 52.

(*r*) *Re Marman*, 8 Ch. D. 256.

(*s*) Daniell, 1650.

and an affidavit identifying the person dead, to which the certificate of death, and probate, or administration or office copy, should be made exhibits (*t*); and if the order deals with purchase money, a consent brief for the purchaser, or an affidavit of notice to him of the intended application, and that the conveyance has been executed and delivered to him, must also be produced (*u*).

Affidavit of no settlement.

The affidavit of no settlement should be made by husband and wife. It is not sufficient for the affidavit to state that the fund is not settled, or is not affected by the settlement. It must state that no settlement or agreement for a settlement has been made; or, if there is a settlement or agreement, it must identify the instrument, and state that there is no other, and the instrument must be produced. When produced the Court will inspect it, or counsel will certify that he has carefully perused it, and that it does not affect the fund; and when produced in chambers an affidavit of the solicitor to the like effect is required (*x*). Where the marriage is not otherwise proved, the affidavit should state the time and place of the marriage, and a certificate thereof should be made an exhibit (*y*).

Where the husband was abroad (*z*), and where he refused to join in the affidavit (*a*), and where the wife had obtained a protection order (*b*), payment out was ordered on an affidavit of the wife alone, coupled with evidence of the above facts.

(*t*) Daniell, 1664.

(*u*) *Ibid.*, 1657.

(*x*) *Britten v. Britten*, 9 Beav. 143; *Rose v. Rolls*, 1 Beav. 270; Daniell, 90; Seton, 670. As to certificate of counsel, see *Hamilton v. Arrowsmith*, W. N. (1877), 261; *re Todd*, 19 Beav. 582.

(*y*) Daniell, 90.

(*z*) *Wilkinson v. Schneider*, L. R. 9 Eq. 423; *Elliott v. Remington*, 9 Sim. 502.

(*a*) *Anon.*, 3 Jur. N. S. 839.

(*b*) *Ewart v. Chubb*, L. R. 20 Eq. 454.



When both husband and wife were abroad, the affidavit of the solicitor was, under special circumstances, admitted (c).

The affidavit has been dispensed with where the sum was very small (d); and also where it was impossible to obtain the usual affidavit (e).

The affidavit is necessary though the fund is to be paid to a widow (f), or to a woman who marries after the date of the order, but before actual payment out (g).

Where a person has not been heard of for seven years, payment out will be ordered to the persons who are entitled to the fund on his death. After seven years there is a presumption of law that he is dead, but at what time within that period he died is not a matter of presumption, but of evidence, and the *onus* of proving that he was alive or dead at any particular time within the seven years lies upon the person whose claim rests upon such fact (h). But where the circumstances tend to show that death took place at a particular period, the Court will presume death at that period, though no strict proof is forthcoming (i).

Every order dealing with a fund liable to duty must provide for payment of duty, or must direct the Chancery Paymaster to have regard to the fact that such duty is payable (k).

Every order providing for the payment of duty is to direct that such duty shall, upon the requisition of the

(c) *Woodward v. Pratt*, L. R. 16 Eq. 127; and see *Rowland v. Oakley*, 14 Jur. 845.

(d) *Veal v. Veal*, L. R. 4 Eq. 115.

(e) *Clarke v. Woodward*, 25 Beav. 455.

(f) *Elrington v. Elrington*, 4 Drew. 545.

(g) *Ante*, p. 24.

(h) *Re Phené*, L. R. 5 Ch. 139; *re Lewes*, L. R. 6 Ch. 356; *re Westbrook*, W. N. (1873), 167; *re Baldwin*, W. N. (1875), 45.

(i) *Hickman v. Upsall*, 4 Ch. D. 144.

(k) Ch. Funds Rules, 1874, r. 14.

Presumption of death after seven years.

Payment of duty.

Commissioners of Inland Revenue, be transferred to the account of the Receiver-General of Inland Revenue at the Bank (*l*).

If the duty has been paid, the official receipt or certificate of the Controller should be produced and entered as read in the judgment or order (*m*). A copy of the entry from the official books is, however, sufficient evidence, if duly proved (*n*); but an affidavit of payment by the applicant's solicitor is insufficient (*o*).

Where a fund chargeable with duty is ordered to be invested, carried over, or placed to a separate account, the words "subject to legacy duty," or, "subject to succession duty," should be added to the title of the account (*p*). But where the fund is not subject to a contingency, the order should provide for the duty, and carry over the residue only, instead of carrying over subject to duty (*q*).

Where legacies are given free of duty, it must be shown that the duty has been paid out of the residue (*r*); and where the residue is insufficient to pay such duty, the legacies must bear the duty rateably (*s*).

Where payment is directed to legal personal representatives, no receipt for duty is necessary, the representatives being accountable (*t*).

If a fund is improperly paid out, without providing for payment of duty, the person chargeable with the duty may, on the petition of the Attorney-General, be ordered to pay the amount (*u*).

(*l*) Ch. Funds Rules, 1874, r. 14.

(*m*) *Ibid.*, r. 57; Seton, 113.

(*n*) *Harrison v. Borwell*, 10 Sim. 380.

(*o*) *Re Marsham*, 12 W. R. 45.

(*p*) Ch. Funds Rules, 1874, r. 14.

(*q*) Regr. Reg. 20 June, 1870; Seton, 112.

(*r*) Seton, 112.

(*s*) *Wilson v. O'Leary*, L. R. 17 Eq. 419.

(*t*) Seton, 113.

(*u*) *Bryan v. Mansion*, 3 Jur. N. S. 473.

The costs of applications for payment out are usually paid out of the fund in Court; and though the application is merely for payment of income, the costs have been ordered to be paid out of corpus (*x*).

The costs of persons appearing unnecessarily, though properly served, have been refused (*y*).

The purchaser under the decree, and a person as against whom proceedings had been stayed, were allowed their costs of appearing on an application to carry over the funds to particular accounts (*z*); but the costs of a purchaser who has got his conveyance will not be allowed (*a*).

(*x*) *Scrivener v. Smith*, L. R. 8 Eq. 310; *Longuet v. Hockley*, 22 L. T. N. S. 198; but see *Eady v. Watson*, 33 Beav. 481. Compare cases under *Trustee Relief Act*, *post*, p. 42.

(*y*) *Justices of Coventry*, 19 Beav. 158; and see *ante*, p. 13.

(*z*) *Rowley v. Adams*, 16 Beav. 312; *Noble v. Stow*, 30 Beav. 272. As to costs where the fund is standing to a separate account, see *Gover v. Stilwell*, 21 Beav. 182.

(*a*) *Barton v. Latour*, 18 Beav. 526.

## CHAPTER III.

### TRUSTEE RELIEF ACT.

#### *Payment in.*

Without an  
order.

TRUSTEES, executors, administrators, and others, or the major part of them, may, on filing an affidavit, shortly describing their trust, pay, and transfer into Court, without an order, any trust moneys, annuities, or Stock at the Bank of England, or Government or Parliamentary Securities (*a*).

On petition.

Where any moneys, annuities, stocks, or securities are vested in any persons upon trust, and the major part of such persons are desirous of paying, transferring, or delivering the same into Court, but the concurrence of the other or others of them cannot be had, the Court may order such transfer, payment, or delivery, to be made by the major part of such persons, without the concurrence of the other or others of them; and where such moneys, or Government or Parliamentary Securities are deposited with any banker, broker, or other depositary, the Court may order payment and delivery of such moneys and securities to the major part of such persons, for the purpose of being paid and delivered into Court (*b*).

Under this section Debenture Stock and Consolidated Stock of a railway company, and also India £4 per cent. Stock, have been ordered to be paid into Court (*c*).

(*a*) 10 & 11 Vic. c. 96, s. 1; *re*  
*Biggs*, 11 Beav. 27; Ch. Funds  
Rules, 1874, r. 34.

(*b*) 12 & 13 Vic. c. 74, s. 1.  
(*c*) *Re Gledstanes*, W. N. (1878),  
26.

Where one of three trustees was mentally incapable, the Court, upon the petition of the other two, made an order for payment in (*d*).

The non-concurring trustees must be served with the petition (*e*).

### *Payment out.*

Where a fund has been paid into Court under the Act, <sup>Powers of the Act.</sup> the Court may make orders as to the investment and payment out of such fund, and of the dividends and interest thereon, and for the administration of the trusts affecting the same; but if it shall appear that the trust funds cannot be safely distributed without the institution of a suit, a suit may be directed (*f*).

The Court has the same jurisdiction upon a petition <sup>Jurisdiction,</sup> under the Act as in an action, and may decide all questions relating to the fund paid in (*g*). It may, upon such petition, declare the validity or invalidity of a deed (*h*); or may make a declaration of right (*i*); or decide questions of construction (*j*); or give effect to a married woman's equity to a settlement (*k*); or direct an issue to try the sanity of a testator (*l*); or direct inquiries, and distribute the fund as in an administration suit (*m*); or reform a deed or rectify a settlement (*n*).

Though the jurisdiction of the Court is properly confined

(*d*) *Re Broadwood*, 8 L. T. N. S. 632.

(*e*) *Re Bryant*, W. N. (1868), 123.

(*f*) 10 & 11 Vic. c. 96, s. 2; *re Fozard*, 24 L. J. Ch. 441.

(*g*) *Re Allen*, Kay, App. 51.

(*h*) *Re Bloye*, 1 Mac. & G. 488; 3 H. L. Ca. 607.

(*i*) *Re Walker*, 16 Jur. 1154; *re Morgan*, 2 W. R. 439.

(*j*) *Re Dalton*, 1 D. M. & G. 265.

(*k*) *Re Disney*, 2 Jur. N. S. 206; *re Cutler*, 14 Beav. 220; *re Grove*, 3 Giff. 575.

(*l*) *Re Allen*, Kay, App. 51.

(*m*) *Re Trower*, 1 L. T. N. S. 54.

(*n*) *Re Hoare*, 4 Giff. 254; *re De la Touche*, L. R. 10 Eq. 603; *re Bird*, 3 Ch. D. 214.

to the fund paid in, yet where a part only of the trust fund had been paid in, the Court, in a clear case, ordered the trustee to pay the remaining part to the persons entitled (*o*); and a prospective order has been made for payment of the income of any future fund to be paid in to the same account (*p*). The Court cannot, on the application for payment out, entertain any question as to whether the right sum has been paid in (*q*).

Application:  
how made.

The application must be by petition, not by motion or action (*r*); or, in cases where the fund does not exceed £300 cash or £300 stock, by summons in chambers (*s*). Where an action has been brought the Court may make a declaration of right, leaving the payment to be obtained on petition (*t*). Where the fund is over £300, it seems that payment out cannot be ordered by the decree in a pending suit without a petition (*u*); though in an administration suit a petition was dispensed with, the order for payment out being entitled in the matter of the Act (*v*). Where, however, an order has once been made on a petition under the Act, any further proceedings may be taken by summons at Chambers (*w*).

Cross petition.

Where there are adverse claims, it seems that a cross petition should, in strictness, be presented (*x*); but in practice this is seldom done, the Court having jurisdiction to order payment to a respondent (*y*).

- |                                                                                                                                 |                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| ( <i>o</i> ) <i>Re Wright</i> , 1 Sm. & G. 185.                                                                                 | ( <i>u</i> ) <i>Otte v. Castle</i> , 1 W. R. 64.                                                |
| <i>App.</i> 5.                                                                                                                  | ( <i>v</i> ) <i>Dixon v. Morley</i> , W. N. (1869), 49.                                         |
| ( <i>p</i> ) <i>Re Chamberlain</i> , 22 Beav. 286.                                                                              | ( <i>w</i> ) <i>Re Hodges</i> , 4 D. M. & G. 491; <i>re Tracey</i> , 6 Ir. R. Eq. 271.          |
| ( <i>q</i> ) <i>Re Sharpe</i> , 15 Sim. 470; <i>re Jenkins</i> , 10 Jur. N. S. 332.                                             | ( <i>x</i> ) <i>Lewis v. Hillman</i> , 3 H. L. Ca. 607.                                         |
| ( <i>r</i> ) <i>Re Masselin</i> , 15 Jur. 1073; <i>exp. Stock</i> , 5 Ir. Ch. R. 341; <i>Pelling v. Goddard</i> , 9 Ch. D. 185. | ( <i>y</i> ) <i>Re Woollard</i> , 18 Jur. 1012; <i>re Walker</i> , 16 Jur. 1154; Daniell, 1791. |
| ( <i>s</i> ) Ch. Funds Amended Ord. r. 6.                                                                                       |                                                                                                 |
| ( <i>t</i> ) <i>Pelling v. Goddard</i> , 9 Ch. D.                                                                               |                                                                                                 |

Any person interested in or entitled to the fund may petition (z), whether named in the trustees' affidavit or not (a). The trustees are competent to present a petition, though they are not the proper persons, and should not do so even at the request of one of the *cestuis que trusts*. If they present the petition they will only be allowed respondents' costs, and the carriage of the order may be given to the *cestuis que trusts* (b). Who may petition.

A person entitled to an aliquot share may petition for payment out of his share (c).

A person of unsound mind, not so found, may petition, by his next friend, for payment of dividends to his next friend for his maintenance (d).

A deaf, dumb, and blind person may petition, without a next friend, for payment out, but only the income will usually be ordered to be paid (e).

The guardians of a parish may petition for payment out of a fund belonging to a pauper lunatic (f); and a professed nun is entitled to have a fund paid out to her (g).

A petitioner may apply *in forma pauperis* (h).

Trustees of charities may petition for payment out under the Act without the consent of the Charity Commissioners (i). Charities. Although charity trustees may pay their

(z) Ch. Funds Amended Ord. r. 6.

(a) *Re Puttrell*, 7 Ch. D. 647; *Pelling v. Goddard*, 9 Ch. D. 185.

(b) *Re Hutchinson*, 1 Dr. & S. 27; *re Cazneau*, 2 K. & J. 249; *re Trouser*, 1 L. T. N. S. 54. *Secus*, if all parties request them to apply; *re Cooper*, cit. 2 K. & J. 251.

(c) *Re Belford*, 21 L. T. 164; *re Hawke*, 18 Jur. 33; *Winkworth v. Winkworth*, 32 Beav. 233.

(d) *Re Perry*, 23 W. R. 335; *re*

*Macfarlane*, 2 J. & H. 673; *Conduit v. Soane*, 5 My. & Cr. 111; *re Brandon*, W. N. (1879), 215; and see *ante*, p. 25.

(e) *Re Biddulph*, 5 De G. & S. 469.

(f) *Re Phelps*, 28 L. T. N. S. 350; *re Upfull*, 3 Mac. & G. 281; and see *ante*, p. 29.

(g) *Re Metcalfe*, 2 D. J. & S. 122.

(h) *Re Money*, 13 Beav. 109.

(i) *Re St. Giles*, 25 Beav. 313; but see next note.

trust fund into Court under the Trustee Relief Act, it is irregular for them to follow that step up by presenting a petition for the administration of the charity funds (*j*).

Title and form  
of petition.

The petition should be entitled in the matter of the Act, and in the matter of the particular trust (*k*). It should set out the material parts of the affidavit (*l*), viz., those describing the trust, and the interests of the persons entitled, and the difficulty which induced the payment into Court (*m*); but the petition should not set out the affidavit *in extenso*, or at needless length (*n*). The petition must name some place where the petitioner may be served with any petition or summons, or notice of any proceeding or order relating to the fund; and until this has been done, the petition cannot be set down to be heard (*o*).

Evidence.

The petition must be supported by proper evidence or the title of the applicant; and, if necessary, inquiries will be directed (*p*). A person making an affidavit may, as in other cases, be cross-examined (*q*). The trustees ought not to take copies of the claimants' affidavits (*r*).

Service.

The petition should be served on all persons interested (*s*). Thus, the trustees should be served with a petition by the persons interested; the persons interested should be served with a petition by the trustees (*t*).

(*j*) *Re Poplar School*, 8 Ch. D. 543; Ch. Funds Amended Orders, 1874, r. 5.

(*k*) Ch. Funds Amended Ord. r. 10; *re Perry*, W. N. (1875), 17. For form of petition, see *post*.

(*l*) *Re Levett*, 5 De G. & S. 619; *Re Flack*, 10 Hare, App. 30.

(*m*) Daniell, 1791.

(*n*) *Re Courtots*, 10 Hare, App. 64.

(*o*) Ch. Funds Amended Orders, 1874, r. 9.

(*p*) *Re Wood*, 15 Sim. 469; *re*

*Sharpe*, *ib.* 470; *re Barber*, 1 Sm. & G. 118; *re Morgan*, 2 W. R. 439; *re Bolton*, 18 W. R. 56; *re Battersby*, 10 Ch. D. 228.

(*q*) *Re Bendyshe*, 5 W. R. 816.

(*r*) *Re Lazarus*, 3 K. & J. 555.

(*s*) *Re Greenland*, 1 W. R. 46; but see *re Colson*, 2 W. R. 111: where the parties were very numerous.

(*t*) Ch. Funds Amended Ord 1874, rr. 7, 8.



Where a trustee cannot be found, the order will be made, upon service at the address mentioned in his affidavit (*u*); and where the house named by the trustees as their address had been pulled down, and they had not been heard of for ten years, service on them was dispensed with (*v*). Service on the trustees was also dispensed with where the fund had been carried to a separate account, and the title was perfectly clear (*w*).

Where the persons interested were very numerous, leave was given to serve some of them on behalf of the others (*x*).

Where the rights of the parties have been declared by the Court, it is not necessary to serve persons who, though named in the affidavit as interested, have not been declared to be so by the Court (*y*).

Where an inquiry had been directed, and the Chief Clerk's certificate found that certain persons, not before the Court, were interested, the Court directed them to be served with the petition, the former order, the certificate, and the present order, and directed the petition to stand over till such persons had been served (*z*).

Where only the trustees had been served, the Court made the order, upon their counsel arguing the case on behalf of the other persons interested (*a*); and in another case, where the trustees only had been served, the Court made the order, but directed that it should not be drawn up for a fortnight, and that the other persons interested should be served with notice, that at the end of that period,

(*u*) *Exp. Baugham*, 16 Jur. 325;  
*re Lawrence*, 14 W. R. 93.

(*v*) *Re Bolton*, 18 W. R. 56.

(*w*) *Re Young*, 5 W. R. 400; *re Beauclerk*, 11 W. R. 203; *re Thomas*, *ibid.* 276.

(*x*) *Re Colson*, 2 W. R. 111.

(*y*) *Re Fosbury*, 39 L. T. N. S. 422.

(*z*) *Re Battersby*, 10 Ch. D. 228.

(*a*) *Re Domville*, 17 Jur. 361.

the fund would be paid out, unless they appeared and objected (*b*).

A petition by a tenant for life for payment of income need not be served on remaindermen (*c*); nor, it seems, upon the trustees, if the petitioner's title is clear (*d*), and the trustees have deducted their costs of payment in (*e*). In such cases, the petitioner should write to the trustee and tell him that, as the petition only affects income, his appearance is unnecessary (*f*). Nor need remaindermen be served, though the petition also asks that the shares of the *corpus* be carried over to the accounts of the remaindermen (*g*).

Where the petitioner's share has been carried over to a separate account, the parties interested in the other shares need not be served (*h*); and it seems that a petition may be presented for payment out of an undivided share, without serving the persons entitled to the other shares (*i*); but in such a case the petition should ask for the other shares to be carried over to separate accounts (*j*), or for liberty to apply in Chambers in respect of the other shares (*k*).

A petition for payment to a lunatic's executors of money paid in by the committee was ordered to be served on the committee, though he had passed his accounts (*l*).

(*b*) *Re Stutely*, 1 De G. & S. 703.

(*c*) *Re Whiteling*, 9 W. R. 830; *exp. Fletcher*, 12 Jur. 619; *re Marner*, L. R. 3 Eq. 432; *re Peart*, 17 L. J. Ch. 168; *re Thornton*, 9 W. R. 475.

(*d*) *Re Evans*, L. R. 7 Ch. 609; *exp. Fletcher, supra*; *re Battell*, 21 W. R. 138.

(*e*) *Beaty v. Curson*, L. R. 7 Eq. 194, 196.

(*f*) *Re Evans, supra*. See R. S. C. (Costs) Spec. All. rr. 17, 21.

(*g*) *Re Hodges*, 6 W. R. 487.

(*h*) *Re Young*, 5 W. R. 400; *re Hodgson*, 2 Eq. Rep. 1083.

(*i*) *Re Hawke*, 18 Jur. 33; *re Belford*, 21 L. T. 164.

(*j*) *Re Hawke, supra*.

(*k*) *Winkworth v. Winkworth*, 32 Beav. 233.

(*l*) *Re Wylde*, 5 D. M. & G. 25.

Where an infant is to be served, a guardian *ad litem* must be appointed (*m*).

The Court has jurisdiction under the Act to order service upon a person out of the jurisdiction (*n*).

The Act makes no provision with regard to costs. In <sup>Costs.</sup> practice, the costs of payment in are usually deducted by the trustees before payment in; but this should only be done where the deductions are not objected to, as the amount may be challenged when the fund comes to be disposed of by the Court. Notice of the amount proposed to be deducted should be given to the parties interested (*o*). Trustees are entitled to their costs, charges, and expenses of payment in (*p*), unless such payment in was unnecessary, vexatious, or merely to escape liability (*q*). The costs of payment in are usually paid out of the corpus of the fund (*r*); but the costs of paying in a legacy by an executor should be paid out of the general residuary estate (*s*). The costs of payment in, though deducted, may, on petition for payment out, be ordered to be taxed (*t*).

The costs of a petition for payment out of corpus usually come out of the fund itself; but where the fund has been paid in by an executor, who has the general residue in his hands, they may be ordered to be paid out

(*m*) *Re Ward*, 2 Giff. 122. As to appointing a guardian *ad litem*, see *ante*, p. 6. 19 L. J. Ch. 175; *re Waring*, 16 Jur. 652; *re Abbot*, 38 L. T. N. S. 442.

(*n*) *Re Haney*, L. R. 10 Ch. 275; *re Wycherley*, 1 L. R. Ir. 12; *re Morant*, W. N. (1879), 144. (*r*) *Re Whitton*, L. R. 8 Eq. 352; *re Lorimer*, 12 Beav. 521.

(*o*) *Beatty v. Curson*, L. R. 7 Eq. 194, 196. (*s*) *Re Cawthorne*, 12 Beav. 56; *re Jones*, 3 Drew. 679; *re Trick*, L. R. 5 Ch. 170; *re Birkett*, 9 Ch. D. 576.

(*p*) *Re Whitton*, L. R. 8 Eq. 352; but see *re Haycock*, 1 Ch. D. 611. (*t*) *Re Hue*, 27 Beav. 337; *re Sweeper*, 19 W. R. 793; *re Haycock*, 1 Ch. D. 611.

(*q*) *Re Elliot*, L. R. 15 Eq. 194; *re Cull*, L. R. 20 Eq. 561; *re Fagg*,

of such residue (*u*). Where some of the shares in the fund had lapsed, the costs were ordered to be paid out of the lapsed shares (*v*).

The costs of a petition by a tenant for life for payment out of income, will be ordered to be paid out of income; and the remainderman should not be served, nor appear (*w*). The trustees' costs of appearance on such a petition should also be paid out of income (*x*); but, *semble*, the trustees should not appear on such a petition (*y*); unless, *semble*, to ask for their costs of payments in, which have not previously been deducted (*z*).

The trustees are *prima facie* entitled to their costs, as between solicitor and client, of appearing on an application for payment out (*a*); but not to their charges and expenses, where the payment in is by an assurance company (*b*). Trustees however may be deprived of their costs where they have paid the fund into Court without sufficient reason (*c*); and in cases of gross misconduct or where the payment in is capricious and vexatious, the

(*u*) *Re Trick*, L. R. 5 Ch. 170; but see *re Birkett*, 9 Ch. D. 576; *re Jones*, 3 Drew. 679; *re Cawthorne*, 12 Beav. 56; *re Feltham*, 1 K. & J. 528.

(*v*) *Re Ham*, 2 Sim. N. S. 106.

(*w*) *Re Marner*, L. R. 3 Eq. 432; *re Evans*, L. R. 7 Ch. 609; *re Mason*, L. R. 12 Eq. 111; *re Munton*, W. N. (1870), 106.

(*x*) *Re Evans*, L. R. 7 Ch. 609; *re Whitton*, L. R. 8 Eq. 352; *re Smith*, L. R. 9 Eq. 374; *re Mason*, L. R. 12 Eq. 111; *re Munton*, W. N. (1870), 106; but see *re Wood*, L. R. 11 Eq. 155.

(*y*) *Re Evans*, L. R. 7 Ch. 609.

(*z*) *Beaty v. Curson*, L. R. 7 Eq.

194, 196.

(*a*) *Re Swan*, 2 H. & M. 34; *re Erskine*, 1 K. & J. 302; *re Wright*, 3 K. & J. 419; *re Wyllly*, 28 Beav. 458; *re Webb*, L. R. 2 Eq. 456; *re Maclean*, L. R. 19 Eq. 282; *re Haycock*, 1 Ch. D. 611.

(*b*) *Re Haycock*, 1 Ch. D. 611; *re Webb*, L. R. 2 Eq. 456; *re Kerr*, L. R. 8 Eq. 331.

(*c*) *Re Waring*, 16 Jur. 652; *re Fagg*, 19 L. J. Ch. 175; *re Covington*, 1 Jur. N. S. 1157; *re Heming*, 3 K. & J. 40; *re Cull*, L. R. 20 Eq. 561; *Desborough v. Harris*, 5 D. M. & G. 439; *re Abbot*, 38 L. T. N. S. 442.

Court will throw upon the trustees personally the costs of the petition (*d*).

A person, who petitions for payment out, cannot object to pay the costs of payment in and appearance, on the ground that the person paying in had no power to do so under the Act (*e*).

The costs of an unsuccessful claimant may, in a proper case, be allowed out of the fund (*f*); but a claimant, not named in the affidavit, who is served and disclaims at the bar, will not be allowed his costs (*g*). The Court has power to order the costs of payment out to be paid by a respondent whose unfounded claim was the cause of the payment in (*h*).

Parties who, though served, have no interest in the fund should not appear; and if they do, they will get no costs (*i*); but £2 2s. should be tendered them for costs of perusal (*j*). So where the first charge will exhaust the fund, the costs of a second incumbrancer will not be allowed (*k*).

Trustees applying for payment out will only be allowed respondents' costs, unless all the beneficiaries request them to petition (*l*).

(*d*) *Re Woodburn*, 1 De G. & J. 333; *re Cater*, 25 Beav. 361, 366; *re Knight*, 27 Beav. 45; *re Foligno*, 32 Beav. 131; *Beaty v. Curson*, L. R. 7 Eq. 194; *re Elliott*, L. R. 15 Eq. 194; *re Roberts*, W. N. (1869), 88; *re Hoskin*, 5 Ch. D. 229; 6 Ch. D. 281.

(*e*) *Re Haycock*, 1 Ch. D. 611; *re Sutton*, 12 Ch. D. 175.

(*f*) *Re Birch*, 2 K. & J. 369; *re Dickson*, 1 Sim. N. S. 37.

(*g*) *Re Parry*, 12 Jur. 615; *re Smith*, 3 Jur. N. S. 659; and see *re Shakeham*, W. N. (1871), 172.

(*h*) *Re Armston*, 4 D. J. & S. 454; *re Ricketts*, 1 J. & H. 70; 9 H. L. Ca. 373; *re Benton*, 43 L. J. Ch. 715.

(*i*) *Re Smith*, *supra*; *re Birch*, *supra*; R. S. C. (Costs) Spec. All. r. 21.

(*j*) R. S. C. (Costs) Spec. All. r. 17.

(*k*) *Roberts v. Bull*, 24 L. J. Ch. 471.

(*l*) *Re Cazneau*, 2 K. & J. 249; *re Hutchinson*, 1 Dr. & S. 27; *re Cooper*, cit. 2 K. & J. 256.

Appeal.

An appeal from an order made under the Act must be brought within twenty-one days (*m*). No appeal lies from an order by which a trustee is deprived of or ordered to pay costs (*n*).

(*m*) *Re Baillie*, 4 Ch. D. 785;  
and see *ante*, p. 14.

(*n*) *Re Hoskin*, 6 Ch. D. 281;  
but see *re Chennell*, 8 Ch. D. 492.

## CHAPTER IV.

### LEGACY DUTY ACT.

WHERE by reason of the infancy, or absence beyond the seas of any person entitled to any legacy, or to the residue of any personal estate, or any part thereof, chargeable with legacy duty, the executor or administrator cannot pay such legacy or residue, or some part thereof, he may pay the same, after deducting the duty, into Court to the account of the person for whose benefit the same is paid (*a*). The money will be invested in Consols upon a written request, without an order (*b*). Payment in without an order.

No order is necessary for payment in, unless the legacy is in stock; in which case an order may be obtained on an *ex parte* petition (*c*), or summons (*d*); and the costs of the application are paid out of interest (*e*). Payment in on petition.

The application for payment out is made by *ex parte* petition (*f*); or if the sum paid in does not exceed £300 cash or £300 stock, by *ex parte* summons at Chambers (*g*). The application may be also made by summons where the fund has been paid in under an order, or where an order in the matter has been made since the payment in (*h*). Payment out.

(*a*) 36 Geo. III. c. 52, s. 32.

xxxv. 1 (2).

(*b*) Ch. Funds Rules, 1874, r.

(*e*) Seton, 733.

65.

(*f*) 36 Geo. III. c. 52, s. 32.

(*c*) *Re Wallington*, 1 W. R. 194; Seton, 732.

For form of petition, see *post*.

(*g*) Cons. Ord. xxxv. 1 (2).

(*d*) Daniell, 1912; Cons. Ord.

(*h*) Daniell, 1913.

Title of  
petition.

The petition and all orders and affidavits should be intituled in the matter of the Act and in the matter of the infant or person beyond the seas.

Evidence.

The application must be supported by an affidavit of the identity of the applicant with the person to whose account the fund is standing; and if the fund was paid in by reason of his infancy, it must be shown that he is of full age. The Chancery Paymaster's certificate of the fund in Court must be produced; and an office copy of his certificate of the payment or transfer into Court is also usually required; but no evidence of the legacy duty having been paid is necessary (*i*).

Improper pay-  
ment in.

If it shall appear that the fund or any part thereof, has been improperly paid in, the Court may, upon petition, dispose thereof in such manner as justice shall require; and if the duty paid shall appear to be less than the duty which ought to have been paid, the person who made the payment into Court may, upon payment of the full duty, apply to the Court, in a summary way, for repayment of the further sum so paid for duty, out of the fund in Court or the produce thereof (*j*).

Insufficient  
duty paid.

(*i*) Daniell, 1913.

(*j*) 36 Geo. III. c. 52, s. 32.



## CHAPTER V.

### PARLIAMENTARY DEPOSITS.

UPON the application of not more than five persons, one of the clerks of the House may by warrant or order direct a parliamentary deposit to be paid into Court (*a*). Parliamentary  
Deposits Act.  
Payment in.

Upon such warrant or order being lodged with the Paymaster-General, he will issue his direction for payment in; and the money or stock is to be paid or transferred to an account *ex parte* the work or undertaking mentioned in the warrant or order (*b*).

If the person or persons named in the warrant or order, or the survivors or survivor of them, desire to have invested any sum so paid into the Bank, or any interest or dividends which may have accrued on any stocks or securities so transferred or deposited as aforesaid, the Court may, on his or their petition, order that such sum or such interest and dividends shall be laid out in consols or reduced annuities or any government security or securities, at the option of such person or persons or the survivor or survivors of them (*c*). Investments.

The term "government securities" has been held to include New £3 5s. per cent. Bank Annuities (*d*). It has been also held that the fund can only be invested in the

(*a*) 9 & 10 Vic. c. 20, s. 2.

(*b*) *Ibid.* s. 3.

(*c*) *Ibid.* s. 4.

(*d*) *Re Newport Rly. Co.*, 11 Jur.  
160.

securities mentioned in the Act, and not as "cash under the control of the Court" (e); but in a subsequent case the Court allowed an investment in India Stock (f).

The Court refused to allow the petitioners any discretion to invest at different times or in different funds, and required them to name the fund in their petition (g). The petitioners will not be allowed to employ their own private broker to effect the investment, but must employ the broker of the Paymaster-General (h).

Payment out.

On the termination of the Session of Parliament in which the petition or bill has been introduced, or if such petition or bill shall be rejected or finally withdrawn or shall not be allowed to proceed, or if no petition is presented or the Act shall be passed, the Court may, upon the petition of the person or persons named in the warrant or order, or the survivors or survivor of them, or the majority of such persons, direct the deposit, and the interest and dividends thereof, to be paid or transferred to the party or parties so applying, or to any other person or persons whom they may appoint in that behalf (i).

Who may petition.

The petition need not be presented by all the depositors; it is sufficient if the application is made by the majority (j). If the petition is signed by the petitioners, the payment or transfer may be ordered to their nominees, as for instance, to their solicitor or banker (k); but the signatures must be verified by affidavit (l). Where the peti-

(e) *Exp. Great Northern R. Co.* L. R. 9 Eq. 274.

(f) *Re Southwold R. Co.*, 1 Ch. D. 697.

(g) *Re Newport R. Co.*, 11 Jur. 160.

(h) *Re Undertaking of West Riding, &c.*, W. N. (1876), 80; *re Bolton Tramways Act*, 34 L. T. N. S. 230.

(i) 9 & 10 Vic. c. 20, s. 5. For

form of petition, see *post*.

(j) *Daniell*, 1859; but see *re Staines R. Co.*, 9 Jur. 479.

(k) *Re Warwick R. Co.*, 13 Sim. 31; *exp. Boston*, 4 Rly. Ca. 230.

(l) *Pemb.* 664. Where the signatures were attested by the solicitor, an affidavit verifying them was not required; *exp. Brompton Waterworks*, 8 W. R. 636, n.

tion is presented by a public company, payment will be ordered to its nominee, if the common seal of the company is attached to the petition, but it is not necessary to verify the seal (*m*). The seal must be affixed to the original petition, and not to a separate authority (*n*).

The fact of the petition or bill having been rejected, or not having been allowed to proceed, or having been withdrawn, or not having been presented, or of the Act having been passed, must be proved by the certificate of the Chairman of Committees\* of the House of Lords, with reference to any proceeding in the House of Lords, or of the Speaker of the House of Commons, with reference to any proceeding in the House of Commons; which certificate the said Chairman or Speaker shall grant on the application in writing of the person or persons, or the majority of the persons named in such warrant, or the survivor or survivors of them (*o*).

In the Speaker's absence the certificate of the Deputy-Speaker was held sufficient evidence of the withdrawal of the bill (*p*); and a Queen's printer's copy of the Act has been held sufficient evidence of the Act having been passed (*q*).

Payment out of part of the deposit will not be ordered on the withdrawal of part of a bill (*r*).

Where a deposit has been paid into court under "The Railways Construction Facilities Act, 1864" (*s*), the Court may, on the application of the persons named in the warrant of the Board of Trade, or of the majority or sur-

Railways Construction Act.

(*m*) *Exp. London, Chatham, & Dover R. Co.*, 8 W. R. 636.

(*n*) *Re Dartmouth R. Co.*, 9 W. R. 609.

(*o*) 9 & 10 Vic. c. 20, s. 5.

(*p*) *Exp. Stocksbridge Railway Bill*, L. R. 2 Eq. 364.

(*q*) *Re Yarmouth R. Co.*, W. N. (1871) 236.

(*r*) *Re Aberystwith Rly.*, 3 De G. F. & J. 201; but see *re Wigan Junction Rly.*, L. R. 10 Ch. 541.

(*s*) 27 & 28 Vic. c. 121, ss. 34-36.

vivors of them, order the same to be invested in such stocks, funds, or securities as the applicants desire, and the Court thinks fit (*t*).

On the application of the depositors or the majority, or survivors, the Court shall order the deposit to be paid out to the applicants, or as they direct, in any of the following events, namely: (1) If within the time mentioned in the certificate, or if none is mentioned, then within five years the railway is opened to the public; (2) If within the same time one half of the nominal capital is paid up and expended; (3) If they deliver to the solicitor of Her Majesty's Treasury a bond as therein mentioned (*v*). Otherwise the deposit shall be forfeited to the Crown (*w*).

Where a railway scheme had become abortive through the impossibility of passing the Act during the then session, the Court ordered payment out under the Act (*x*).

Evidence of the payment up and expenditure of capital aforesaid, shall be by the certificate of the Board of Trade; and the delivery of the bond shall be proved by the certificate of the solicitor to the Treasury (*y*).

The depositors are entitled to the interest on the deposit, and may apply to the Court for payment of the same (*z*).

Any applications under this Act shall be made in a summary way in such manner as the general orders of the Court direct (*a*).

Where a warrant for abandonment is granted under "The Abandonment of Railways Act, 1850" (*b*), the deposit, or if the abandonment authorised is of part only of a

Railway Companies Act,  
1867.

(*t*) 27 & 28 Vic. c. 121, s. 38.

(*v*) *Ibid.* s. 40.

(*w*) *Ibid.* s. 41.

(*x*) *Re Widnes Rly. Co., L. R.*  
15 Eq. 108.

(*y*) 27 & 28 Vic. c. 121, s. 44.

(*z*) *Ibid.* s. 43.

(*a*) *Ibid.* s. 46. No general  
orders have been made.

(*b*) 13 & 14 Vic. c. 83, s. 15.

railway, then such proportionate part as the Board of Trade thinks fit, shall be paid to the persons who would be entitled to receive the same if the railway had been completed and opened; and the Court shall, on the application of such persons, order payment accordingly, on a certificate of the Board of Trade that such warrant for abandonment has been granted (c).

Where the warrant for abandonment is made on condition that the deposit shall be applied as part of the assets of the company, the Court may direct that it shall not be applicable for the payment of any debt which appears to have been incurred on account of the promotion of the company (d).

The expenses incurred in getting the bill passed, and in getting up the company, and even in getting subsequent Acts, are debts incurred on account of promotion within the above section (e).

Where the warrant is granted upon condition that the deposit is applied as assets of the company, and the company is being wound up, the Court may order the deposit or so much thereof as is required to be applied as assets of the company to be paid or transferred to the official liquidator; and unless the Court is satisfied that the same nor any part thereof is not required to be applied as assets, the Court is not to order the same or any part thereof to be paid or transferred to any other person (f).

When part of a deposit was paid out under the above section, the costs of the petitioning depositors and of the

(c) 30 & 31 Vic. c. 127, s. 34.

10 Eq. 613; *re Barry Rly. Co.*, 4

(d) 32 & 33 Vic. c. 114, s. 4; *re Lougharne Rly. Co.*, L. R. 12 Eq. 454.

Ch. D. 315; but see *re Kensington Station Act*, L. R. 20 Eq. 197.

(f) 32 & 33 Vic. c. 114, s. 6.

(e) *Re Brampton Rly. Co.*, L. R.

liquidator were ordered to be paid out of the general assets of the company (*g*).

Tramways Act, 1870. The Board of Trade Rules made under the Tramways Act, 1870, (*h*) contain a provision with regard to investment of deposits similar to that contained in "The Railways Construction Act, 1864" (*i*).

Deposits paid in under "The Tramways Act, 1870," may be paid out, if, within the time prescribed by the provisional order or within two years, the tramway is completed and opened for public traffic (*j*).

The promoters are not by any subterfuge to get back the deposit either directly or indirectly, if the tramway is not completed (*k*).

If the tramway is not opened within the said time, the deposit shall, after due notice in the *Gazette*, be applied towards compensating road authorities, and subject thereto, shall either be forfeited to the Crown, or, if the promoters are a company and such company has been ordered to be wound up, or a receiver has been appointed, it shall be paid to the liquidator or receiver, or be otherwise applied as assets of the company for the benefit of the creditors thereof (*l*).

Under this section the deposit cannot be applied as assets of the company until it is ascertained in the winding up that there are debts which cannot be paid by means of calls on the shareholders (*m*). It is only creditors that are to be considered, and not shareholders or

(*g*) *Re Laugharne Rly. Co.*, L. R. 12 Eq. 454.

(*h*) 33 & 34 Vic. c. 78, s. 64. See rule 23.

(*i*) 27 & 28 Vic. c. 121, s. 38; *Ante*, p. 49.

(*j*) Board of Trade Rules, 25.

(*k*) *Re Lowestoft Tramways*, 6

Ch. D. 484; but see *re Tynemouth Tramway*, 33 L. T. N. S. 8.

(*l*) Rule 26.

(*m*) *Re Bradford Tramways*, 4 Ch. D. 18; but see *re London and County Tramways*, W. N. (1875) 49.

promoters; and it is only meritorious creditors coming within a *bonâ fide* case (*n*).

Where an order was made for payment out to the liquidator, the costs of the Attorney-General were ordered to be paid out of the deposit (*o*).

¶ If Parliament refuse to confirm the provisional order, or authorise only part of the tramway, or if such order is withdrawn, the depositors may apply for payment out of the deposit, or a proportionate part thereof (*p*).

In pursuance of the Standing Orders of the Lords and Commons, there is inserted in special Railway and Tramway Acts a clause that, if the line is not opened within the time limited, the deposit shall, after due notice in the *Gazette*, be applied towards compensating landowners and other persons, and subject thereto, shall be forfeited to the Crown, or be applied as assets of the company (*q*). Special Acts.

The Court has refused to dispense with the usual inquiry and advertisements as to landowners, though no notices to treat had been given, and none of the powers of the Act had been put in force (*r*). Inquiry and advertisements.

A petition for payment out of a parliamentary deposit is vacation business (*s*). Vacation business.

(*n*) *Re Lowestoft Tramways*, 6 Ch. D. 484; but see *re Tynemouth Tramways*, 33 L. T. N. S. 8.

(*o*) *London and County Tramways*, W. N. (1875) 49.

(*p*) Rule, 28. As to interest on the deposit, see rule, 27.

(*q*) Standing Orders, 1878, Lords, 114-116, Commons, 158.

(*r*) *Re Yarmouth Pier Co.*, W. N. (1876) 226; *re Brewood Rly. Co.*, W. N. (1879) 109.

(*s*) *Re Wigan Junction Rly.*, L. R. 10 Ch. 541.

## CHAPTER VI.

### THE NATIONAL DEBT ACT, 1870.

Application for  
transfer.

WHERE a person claims stock or dividends, which have been transferred or paid to the National Debt Commissioners, and he is unable to satisfy the Bank of England of his right thereto, he may, by petition, state and verify his claim to the Chancery Division of the High Court. The petition must be served on the Attorney-General, and on the National Debt Commissioners; and the Court shall make such order as to retransfer of the stock, and payment of dividends or otherwise, and as to costs as shall seem just (*a*).

Notice of  
transfer.

Stock or dividends exceeding £20, will not be retransferred or paid until three months after the application made for the same (*b*); nor until public notice has been given thereof (*c*). Such public notice shall be given, as the Bank thinks fit, by advertisement in one or more newspapers circulating in London and elsewhere. Every such notice shall state the name, residence, and description of the person in whose name the stock was standing when transferred to the commissioners, the amount thereof, the name of the claimant, and the time at which the retransfer will be made; and where such retransfer is

(*a*) 33 & 34 Vic. c. 71, s. 55. *Rushworth v. Walden*, 18 W. R. 204.  
For form of petition, see *post*.  
(*b*) 33 & 34 Vic. c. 71, s. 56; (*c*) 33 & 34 Vic. c. 71, s. 56.



ordered by the Court, the notice shall also state the purport of such order (*d*).

Any person may, before the retransfer or payment, apply to the Court by motion or petition, to rescind or vary the order for retransfer or payment (*e*). Application to rescind order.

Where, after transfer or payment, another claimant proves his right to the fund, but cannot obtain transfer or payment from the first claimant, the Court may, on the petition of the second claimant, order the commissioners to transfer to him such sum in stock, and pay to him such sum in money for dividends as the Court thinks just (*f*). Application by second claimant.

Where the title is clear, the Court will at once order the retransfer, without an inquiry (*g*); but if the title is not clear, or if the dividends have not been claimed for many years, an inquiry as to the persons interested will be directed (*h*). Where the title is disputed, it seems that the Court cannot decide the question on petition (*i*). Inquiry: when directed.

No order will be made in the absence of the legal owner of the fund (*k*); and where stock is in the name of a trustee, the retransfer will be ordered, not to the beneficiary, but to the trustee (*l*); but the fund will not be paid to the legal owner in the absence of the persons beneficially entitled (*m*). Legal owner.

A petitioner, who proves his right, is entitled to a Accumulations.

(*d*) 33 & 34 Vict. c. 71, s. 57.

(*e*) *Ibid.* s. 58.

(*f*) *Ibid.* s. 60. *Exp. Jolliffe*, 8 Beav. 168.

(*g*) *Exp. Nicholl*, T. & R. 119; *re Avery*, 1 R. & M. 356; *exp. Bouts*, 5 Jur. N. S. 951; *re Ackland*, 26 L. T. N. S. 418. As to evidence see *Howard v. Kay*, 4 Drew. 151; *re Beamish*, 9 W. R. 475.

(*h*) *Exp. Ram*, 3 My. & Cr. 25; *re Bishton*, 6 W. R. 289; *re*

*Molony*, 1 J. & H. 249.

(*i*) *Exp. Lavell*, 2 J. & W. 397; *Hunt v. Peacock*, 6 Hare, 361; but see *Exp. Gillett*, 3 Madd. 28.

(*k*) *Re Ashmead*, L. R. 8 Ch. 113; but see *re Steel*, W. N. (1867) 282.

(*l*) *Exp. Jameson*, L. R. 19 Eq. 430.

(*m*) *Exp. Ram*, 3 My. & Cr. 25; but see *re Ackland*, 26 L. T. N. S. 418.

retransfer of the stock, and payment of the dividends; but not to accumulations arising from the investment of dividends (*n*).

Amount of stock unknown.

Where the precise amount of the stock is unknown to the petitioner, the Bank will, at the request of the registrar of the Court, supply the information (*o*).

Fund to be dealt with in action.

Where the fund is to be dealt with in an action, it should not be directed to be paid to the credit of the action, but to the petitioners, they undertaking to pay it into Court to the credit of the action (*p*).

Costs.

The costs of the Attorney-General, and of the Commissioners, were formerly directed to be paid out of the fund (*q*); but now they are generally ordered to be paid by the petitioners; and the order for transfer is usually made conditional on the previous payment of such costs (*r*); which will only be taxed as between party and party (*s*).

Unclaimed annuities.

The Act applies to unclaimed annuities for terms of years, forming part of the National Debt (*t*).

(*n*) *Re Ashmead*, L. R. 8 Ch. 113; and see *re Holland*, 1 Phil. 379.

(*o*) *Re Stapleton*, W. N. (1872) 185.

(*p*) *Rushworth v. Walden*, 18 W. R. 204.

(*q*) *Exp. Martin*, Jac. 55; *exp. Gillett*, 3 Madd. 28; *re Holland*, 1 Phil. 379. The Attorney-General sometimes appears for the Commis-

sioners, as well as for the Crown, see *Lawrence v. Maule*, 4 Drew. 472; *exp. Ram*, 3 My. & Cr. 25.

(*r*) *Rushworth v. Walden*, 18 W. R. 204; *exp. Sanford*, W. N. (1867) 77; *re Steel*, W. N. (1867) 282; *exp. Jameson*, L. R. 19 Eq. 430.

(*s*) *Re Holland*, 1 Phil. 379.

(*t*) 33 & 34 Vic. c. 71, s. 68.

## CHAPTER VII.

### THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

#### *Applications under ss. 69, 70.*

MONEY paid into court under the 69th section, in respect Section 69. of lands belonging to persons under disability, may be applied : (1) in the discharge of land tax or incumbrances ; (2) in the purchase of other lands ; (3) in replacing buildings ; or (4) in payment to persons absolutely entitled ; and in the meantime may be invested in government or real securities.

The application to the Court, for an order directing the money to be so applied must be made by petition, even Application, how made. though the amount is under £300 (a) ; but where an order has been made on petition for investment of part of the fund, leave may be given to apply in chambers as to the investment of the balance (b).

The petition should be entitled in the matter of the will Form of petition. or settlement affecting the lands, and of the Lands Clauses Consolidation Act, and of the Special Act (c). The sections of the Act should not be set out in the peti-

(a) 8 & 9 Vic. c. 18, s. 70 ; *re Clarke*, 6 W. R. 812.

(b) *Re Dunraven*, 10 W. R. 56 ; *re Reaston*, L. R. 13 Eq. 564 ; *re Jolliffe*, W. N. (1868), 56 ; *re Lapworth*, W. N. (1879), 37. For other cases where applications under

the Act have been made by summons, see *re Jolliffe*, L. R. 9 Eq. 668 ; *exp. Incumbent of Guilden Sutton*, 8 D. M. & G. 380.

(c) *Re Clarke*, 10 L. T. N. S. 366 ; *Seton*, 1424. For form of petition, see *post*.

tion (*d*). Where an order has been made by one branch of the Court, subsequent applications should be made to the same branch; and where funds have been dealt with by two branches, leave will be given to make the application to the one in which the first order was made (*e*), without any order for transfer (*f*).

Who may  
petition.

The proper person to petition is the person entitled to the rents and profits of the land taken (*g*). A tenant for life may petition, though the land is subject to a mortgage, or charged with an annuity (*h*).

An incumbrancer or annuitant cannot petition (*i*); nor can a remainderman, though plaintiff in an administration suit, petition for a transfer of the fund to the credit of the cause (*j*).

A tenant for life may petition for investment and payment of dividends, though the conveyance has not been executed (*k*), and though the title is doubtful (*l*).

Service.

A petition for investment in land should be served on the company, but not on remaindermen (*m*); but remaindermen should be served where the application is for investment in improvements (*n*), or where the petition is presented under the 74th section (*o*). Where the fund is standing to the credit of a cause, as well as of the matter of the Act, the petition must be served upon all persons

(*d*) *Re Manchester, &c.*, 8 Hare, 31; but see *re Lilley*, 17 Sim. 110.

(*e*) *Re Browne*, 14 W. R. 298.

(*f*) *Re Lord Arden*, L. R. 10 Ch. 445.

(*g*) 8 & 9 Vic. c. 18, s. 70.

(*h*) *Re Hungerford*, 3 K. & J. 455; *exp. Cofield*, 11 Jur. 1071; *re Pedley*, 1 Jur. N. S. 654.

(*i*) *Exp. Back*, 2 You. & Jer. 386; but see *exp. Wilkinson*, 3 De G. & S. 633. Compare s. 78; *post*,

p. 75.

(*j*) *Nash v. Nash*, 16 W. R. 1105.

(*k*) *Re Wrey*, 13 W. R. 543; *re Hungerford*, 1 K. & J. 413.

(*l*) *Re Perry*, 1 Jur. N. S. 917.

(*m*) *Exp. Staples*, 1 D. M. & G. 294; *re Sterry*, 3 W. R. 561.

(*n*) *Re Leigh*, L. R. 6 Ch. 887; *re Dowling*, 24 W. R. 729.

(*o*) *Re Crane*, L. R. 7 Eq. 322; *post*, p. 73.

interested in the money, or upon the trustees who represent them (*p*).

Trustees may be served, but they will only be allowed their costs as against the company where the fund cannot be dealt with without having them before the Court (*q*); but they ought not to be served with a petition for interim investment (*r*).

A person entitled to an aliquot share in the fund may apply for payment out of his share, without serving the persons entitled to the other shares (*s*).

Petitioners claiming to be entitled to money paid in Evidence. under this or any other Act authorising the sale of property for public purposes, must make an affidavit, not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum in the petition mentioned, or to any part thereof; or if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same (*t*).

The affidavit is necessary though the petition is merely for investment (*u*), or payment of dividends; and the Court will not, even under special circumstances, dispense with such affidavit (*x*). It appears also to be necessary where the application is by a tenant in tail who has executed a disentailing deed (*y*).

(*p*) *Bradshaw v. Fane*, 9 Jur. N. S. 166; *Henniker v. Chafy*, 35 Beav. 124.

(*q*) *Re Bowes*, 12 W. R. 929; *re Finch*, 14 W. R. 472; *re Duke of Cleveland*, 1 Dr. & Sm. 48; *re Burnell*, 12 W. R. 568.

(*r*) *Re Dowling*, 24 W. R. 729.

(*s*) *Re Midland Railway Co.*, 11 Jur. 1095; *re Clarke*, 6 W. R. 812; *re Sowry*, 21 W. R. 717.

(*t*) Cons. Ord. XXXIV. 3.

(*u*) *Re Edward Sixth Almshouses*, 16 W. R. 841; *re Johnson*, L. R. 8 Eq. 348.

(*x*) *Exp. Hollick*, 4 Rail. Ca., 498; *exp. Warden of Winchester Coll.*, 14 W. R. 788; *re Milne*, 8 L. T. N. S. 199; but see *re Braye*, 9 Hare, App. 7; *re Bristol, &c.*, W. N. (1870), 241.

(*y*) *Thornhill v. Milbank*, 12 W. R. 523.

It is sufficient if the affidavit is made by one of several petitioners (*z*); or by executors, where the tenant for life is very old and infirm (*a*); or by his solicitor, where the petitioner is too ill to make it himself (*b*); or by their clerk, when the application is by trustees of a charity (*c*).

In a recent case, however, Vice-Chancellor Hall ordered payment out of the fund on an affidavit merely verifying the title by the surviving trustee of the will under which the petitioners claimed, without requiring an affidavit in accordance with Cons. Ord. xxxiv. by any of the petitioners (*d*).

The execution of a deed affecting the petitioner's title was held to be sufficiently proved by proof of the handwriting of the attesting witness (*e*).

Inquiry as to  
investment.

On a petition for investment in land the Court must be satisfied as to the fitness of the purchase. When it is not satisfied on this point, the Court will direct an inquiry as to the propriety of the investment (*f*). When it is satisfied, it will approve the investment at once, and direct an inquiry as to title, and subject to the approval of the title, will direct the conveyance to be executed and the purchase money to be paid (*g*). The reference or inquiry as to title has been dispensed with where the title had been already approved by one of the conveyancing counsel, and such approval had been verified (*h*), and also where the fund invested was only £50 (*i*); and leave has been given

Inquiry as to  
title.

(*z*) *Re Vale of Neath, &c.*, W. N. (1866), 78; *re Smith*, 14 W. R. 949.

(*a*) *Re Smith*, 14 W. R. 949.

(*b*) *Re Halsey*, W. N. (1870), 68.

(*c*) *Re Edward Sixth Almshouses*, 16 W. R. 841; Seton, 1425.

(*d*) *Re Batty*, W. N. (1877), 212.

(*e*) *Re Mair*, 28 L. T. N. S. 760.

(*f*) *Re Caddick*, 9 Hare, *App.*

9; *exp. Duckle*, 16 Jur. 511; *exp. Lowe*, 19 L. T. 310.

(*g*) For form of order see 10 Hare, *App.* 36; Seton, 1427.

(*h*) *Re Caddick*, 9 Hare, *App.* 9; *exp. Vicar of Dereham*, 21 L. J. Ch. 677.

(*i*) *Re Lapworth*, W. N. (1879) 37.

to apply in chambers that the investigation of the title might be dispensed with (*j*). The inquiry as to title will be a general one, and will not be directed to be made subject to the conditions of sale (*k*).

Money paid in under the 69th section remains impressed with the character of real estate (*l*). Conversion.

### *Interim investment—s. 70.*

Until the money can be applied under the 69th section it may, upon an order of the Court made on petition, be invested in the purchase of Three per cent. Consolidated or Three per cent. Reduced Bank Annuities, or in government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would have been entitled to the rents and profits of the land (*m*). Section 70.

The application must be made by petition; but where part only is invested liberty may be given to apply in chambers as to the investment of the residue (*n*). On the death of a tenant for life an order for payment to his executors of arrears of dividends and apportioned dividends may be made on summons; but the order for payment of the other part of the apportioned dividends, and of future dividends, can only be made on petition (*o*). Application,  
how made.

The petition must not be served on persons having charges on the inheritance prior to the life estate (*p*), nor on trustees (*q*). Service.

The court will sanction an *interim* investment on Investment on  
mortgage.

(*j*) *Re Blomfield*, 25 W. R. 37.

(*k*) *Meyrick v. Laws*, 34 Beav. 58; *exp. Christ's Hos.*, 2 H. & M. 166.

(*l*) *Kelland v. Fulford*, 6 Ch. D.

491. See *post*, p. 76.

(*m*) 8 & 9 Vic. c. 18, s. 70.

(*n*) *Re Dunraven*, 10 W. R. 56; *re Lapworth*, W. N. (1879) 37; *re Jolliffe*, W. N. (1868), 56.

(*o*) *Re Jolliffe*, L. R. 9 Eq. 668.

See *ante*, p. 27.

(*p*) *Re Morris*, L. R. 20 Eq. 470.

(*q*) *Re Dowling*, 24 W. R. 729.

mortgage; but there must be an inquiry as to title, and as to the sufficiency of the security (*r*).

Cash under  
control of the  
Court.

Money paid into court under this Act, or under a special Act, is "cash under the control of the Court," and may be invested in East India stock (*s*), but not in Indian Railway stock (*t*); and it seems that an investment may be made in Metropolitan Consolidated stock (*u*).

Payment of  
dividends.

The order for payment of dividends should, in the case of trustees, direct payment to them or the survivors, or to the trustees for the time being (*x*). Orders have also been made for the payment to two trustees or either of them (*y*); to a rector, vicar, or archbishop, "for the time being" (*z*); to any two of the trustees for the time being of a charity (*a*); and to the secretary of a charity, where there was no treasurer (*b*).

Where there are successive life interests, the Court will make a prospective order for payment of the dividends to the second tenant for life on the death of the first (*c*).

The Court will make an order for payment of dividends to the tenant for life before the conveyance is executed, where the company are in possession of the land (*d*).

(*r*) *Re Smith*, L. R. 9 Eq. 178; *re Flemon*, L. R. 10 Eq. 612; *re Blyth*, L. R. 16 Eq. 468; *re Sewart*, L. R. 18 Eq. 278.

(*s*) *Re Foy*, 23 W. R. 744; *re Wilkinson*, L. R. 9 Eq. 343; *re Fryer*, L. R. 20 Eq. 468; *re Southwold*, 1 Ch. D. 697, see *post.*, p. 93.

(*t*) *Green v. Angell*, W. N. (1867) 305; *re Dowling*, 24 W. R. 729.

(*u*) *Re Redhead*, 39 L. T. N. S. 60.

(*x*) *Re Pryor*, 35 L. T. N. S. 202; *re Metropolitan Railway*, W. N. (1876) 245; but see *Seton*, 88, and *ante*, p. 26.

(*y*) *Re Clinton*, 8 W. R. 492; and see *ante*, p. 26.

(*z*) *Re Davenant*, 2 W. R. 344; *re Pearce*, 24 Beav. 491; *exp. Churchwardens of Bicester*, 5 Rly. Ca. 702; *exp. Archbishop of Canterbury*, 2 De G. & S. 365.

(*a*) *Re Collins*, 20 L. J. Ch. 168.

(*b*) *Re Codrington*, L. R. 18 Eq. 658.

(*c*) *Re Brent*, 8 W. R. 270; *re How*, 15 Jur. 266; and see *ante*, p. 26.

(*d*) *Re Hungerford*, 1 K. & J. 413.



*Discharge of Incumbrances—s. 69.*

Money paid in under the 69th section may be applied Land Tax. in the purchase or redemption of the land-tax affecting the land taken or other lands settled to like uses, trusts, or purposes (e); and where a tenant for life had redeemed the land-tax, he was held entitled to be repaid the amount out of the fund paid into Court (f).

Such moneys may also be applied in the discharge of any debt or incumbrance affecting the land taken, or other lands settled to like uses, trusts, or purposes.

A leasehold interest is an incumbrance within this section (g); so also is a quit-rent (h). What is an incumbrance.

All lands of a municipal corporation are held upon the same "uses, trusts, and purposes," within the meaning of this section; so that money paid for the purchase of lands of a corporation may be applied in the redemption of an incumbrance on other lands of the same corporation (i); and such moneys have been applied in the payment off of mortgages of tolls, and in discharge of bonds payable out of a mixed fund largely composed of the rents and profits of the real estate of the corporation (j).

*Investment in Land and Buildings—s. 69.*

Moneys paid in under the 69th section may be applied in the purchase of lands: to be conveyed, limited, and settled, upon the like uses, trusts, and purposes, and in

(e) Sect. 69; and see *exp. Beddoes*, 2 Sm. & G. 466.

(f) *Exp. Northwick*, 1 Y. & C. Ex. 166.

(g) Sect. 69. *Re Manchester, &c.*, 21 Beav. 162; *exp. Bishop of London*, 2 D. F. & J. 14; *exp. Corporation of London*, L. R. 5 Eq.

418; but see *exp. Dean of Manchester*, 28 L. T. N. S. 184.

(h) *Exp. Studdert*, 6 Ir. Ch. Rep. 53.

(i) *Exp. Corp. of Cambridge*, 6 Hare, 30.

(j) *Re Derby Municipal Estates*, 3 Ch. D. 289.

the same manner as the lands taken stood settled; or if such moneys have been paid in respect of any buildings taken or injured, such moneys may be applied in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court shall direct (*k*).

Such moneys may be invested in other lands, though the petitioner is absolutely entitled; and a slight alteration in the trusts is immaterial (*l*).

The Court may direct part only of such moneys to be reinvested, and the residue to be paid out to the petitioner (*m*); or may give liberty to apply in chambers as to the investment of the residue (*n*).

Where advantageous, the Court will allow the money to be invested, together with other trust moneys, in the purchase of one estate (*o*).

Copyholds or leaseholds.

The purchase-money of freeholds or copyholds may be invested in copyholds, if beneficial to the persons interested (*p*). The purchase-money of leaseholds may be invested in copyholds or freeholds (*q*). But where the money arises from the sale of a settled estate comprising both freeholds and copyholds, it cannot be invested in leaseholds, however advantageous such an investment may be (*r*). The purchase-money of a freehold chapel was, however, allowed to be invested in a leasehold chapel, to be used in place of that taken (*s*). The purchase-money of freeholds or copyholds may be applied in the enfranchisement of copyholds, settled upon the same trusts (*t*).

(*k*) 8 & 9 Vic. c. 18, s. 69.

(*l*) *Re Jones*, 18 W. R. 312.

(*m*) *Re Jones*, 39 L. J. Ch. 190; and see *re Sowry*, L. R. 8 Ch. 736.

(*n*) *Re Lapworth*, W. N. (1879), 37.

(*o*) *Exp. Newton*, 4 Y. & C. Ex. 518.

(*p*) *Re Cann*, 15 Jur. 3; *re*

*Browne*, 6 Rail. Ca. 733.

(*q*) *Re Liverpool*, 1 Sim. N. S. 202; *re Parker*, L. R. 13 Eq. 495.

(*r*) *Re Lancashire, &c.*, 2 W. R. 667.

(*s*) *Re Rehoboth Chapel*, L. R. 19 Eq. 180; but see *exp. Macaulay*, 23 L. J. Ch. 815.

(*t*) *Re Cheshunt Coll.*, 3 W. R.

The purchase money of leaseholds may be invested in the purchase of copyholds (*u*), or may be applied in the purchase of a reversion in fee of other leaseholds belonging to the same parties (*v*).

The Court will sanction a reinvestment in the purchase <sup>Ground rents.</sup> of ground rents (*w*), and in land out of the jurisdiction (*x*); but not in the purchase of an equity of redemption (*y*).

The purchase money of a lunatic's estate has been in- <sup>Lunatic's property.</sup> vested in guaranteed railway stock, the investment being treated as a reinvestment in land (*z*).

The Court will allow the money to be applied in re- <sup>Re-building.</sup> building, where such moneys arise from buildings taken or injured by the company (*a*).

Where the moneys do not arise from buildings so taken <sup>New buildings.</sup> or injured, they may be applied in the erection of new buildings on the estate, provided such an application would be beneficial to the estate, and the remaindermen do not object (*b*).

But the Court will not sanction repairs or improvements <sup>Repairs and improvements.</sup> which do not put new buildings on the estate (*c*), nor will it allow the fund to be applied in recouping the tenant for life any outlay not properly a charge upon the inheritance (*d*).

638; *Dixon v. Jackson*, 25 L. J. Ch. 588.

(*u*) *Re Coyte*, 1 Sim. N. S. 202.

(*v*) *Re Brasher*, 6 W. R. 406; see further as to leaseholds, *post*, p. 72.

(*w*) *Re Mason*, W. N. (1872), 77.

(*x*) *Re Taylor*, 40 L. J. Ch. 454.

(*y*) *Exp. Craven*, 17 L. J. Ch. 215; *re Portadown*, Ir. R. 10 Eq. 368.

(*z*) *Re Buckingham*, 2 Ch. D. 690; and see *re Brewer*, 1 Ch. D. 409; *re Milnes*, 1 Ch. D. 28.

(*a*) 8 & 9 Vic. c. 18, s. 69; *exp. Corp. of Liverpool*, L. R. 1 Ch. 596.

(*b*) *Re Leigh*, L. R. 6 Ch. 887; *Drake v. Trefusis*, L. R. 10 Ch. 364; *Williams v. Aylesbury Rly. Co.*, L. R. 9 Ch. 684; *Re Newman*, *ibid.* 681; *re Oxford, &c.*, 27 Beav. 571.

(*c*) *Re Leigh*, *supra*; *Drake v. Trefusis*, *supra*.

(*d*) *Re Leigh*, *supra*; *re Davis*, 3 De G. & J. 144; *Williams v.*

The Court has, however, allowed the fund in Court to be applied towards payment of the costs of lateral additions to a house which was part of the settled estate (*e*); in erecting dwellinghouses in the place of trade buildings (*f*); in converting stables into dwellinghouses, where the former were a nuisance (*g*); in altering and improving almshouses (*h*); in building a temporary hospital (*i*); in the improvement of schools (*k*); and in furnishing a water supply to an estate or town (*l*); but it has refused to allow the making of roads (*m*), nor would it sanction the erection of offices, where the property taken did not consist of buildings, and where it was not shown to be beneficial to the parties interested (*n*).

Glebe land.

Where the land taken was glebe land, the Court has allowed the purchase money or compensation to be applied in building a rectory house or vicarage (*o*); in making additions to (*p*) and in repairing a rectory (*q*); in building or rebuilding a farmhouse on the glebe (*r*); in enclosing and fencing lands allotted to a rector under an Inclosure Act (*s*); but it will not allow it to be applied in the resto-

*Aylesbury Rly. Co.*, *supra*; but see *exp. Rector of Gamston*, 1 Ch. D. 477; *re Wight*, 6 W. R. 718; *exp. Rector of Holywell*, 27 W. R. 707.

(*e*) *Re Speer*, 3 Ch. D. 262.

(*f*) *Re Johnson*, L. R. 8 Eq. 348.

(*g*) *Re Lymington Baptist Chapel*, W. N. (1877), 226.

(*h*) *Re Buckinghamshire Rly. Co.*, 14 Jur. 1065.

(*i*) *Re St. Thomas' Hospital*, 11 W. R. 1018.

(*k*) *Re Chelsea Waterworks*, 28 L. J. 173.

(*l*) *Re Lathropp's Charity*, 35 Beav. 297; *re Croker*, W. N. (1877), 38.

(*m*) *Re Belfast Water Commissioners*, Ir. R. 5 Eq. 63.

(*n*) *Exp. Corp. of Liverpool*, L. R. 1 Ch. 596.

(*o*) *Exp. Rector of Hartington*, 23 W. R. 484; *re Incumbent of Whilfield*, 1 J. & H. 610; Seton, 1432.

(*p*) *Exp. Rector of Claypole*, L. R. 16 Eq. 574.

(*q*) *Exp. Rector of Grimoldby*, 2 Ch. D. 225; but see *Williams v. Aylesbury Rly. Co.*, L. R. 9 Ch. 684.

(*r*) *Re Wigan Glebe Act*, 3 W. R. 41; *exp. Rector of Shipton*, 19 W. R. 549; *exp. Rector of Holywell*, 27 W. R. 707.

(*s*) *Exp. Lockwood*, 14 Beav. 158, and see *re Queen Camel*, 11 W. R. 503, as to drainage.

ration of the chancel or in paying off money borrowed from the Governors of Queen Anne's Bounty (*t*).

Notwithstanding the cases above mentioned, in which repairs and improvements have been allowed, it seems, as we have already seen, that the Court will not allow the money to be applied in repairs nor in permanent improvements which do not put new buildings on the ground (*u*).

Where the fund is directed to be applied in the erection of buildings, it will not be paid out until their completion (*v*), though it is sometimes paid out on an undertaking to apply it as directed (*x*). Undertaking to build.

Where the money is paid in respect of a burial ground, the income will be directed to be paid to the person entitled to the burial fees (*y*). Burial ground.

Where, after investment, a small balance remains, it may, if it does not exceed £20, be ordered to be paid to the tenant for life (*z*).

### *Payment out—s. 69.*

The Court may order the fund, or a share of the fund, to be paid out to any person becoming absolutely entitled thereto (*a*). Persons absolutely entitled.

Trustees with a power of sale are persons "absolutely entitled" within the meaning of the Act (*b*); and the fund may be paid out to them, though their *cestui que* Trustees.

(*t*) *Exp. Grimoldby*, 2 Ch. D. Ch. 776.

(*u*) *Drake v. Trefusis*, L. R. 10 Ch. 364, *ante*, p. 65.

(*v*) *Re Dummer*, 2 De G. J. & S. 515; *exp. Rector of Shipton*, 19 W. R. 549.

(*x*) *Re Lymington Chapel*, W. N. (1877), 226; *re Wight*, 6 W. R. 718; *exp. Thorner*, 12 L. T. 266; *exp. Rector of Claypole*, 42 L. J.

(*y*) *Re St. Pancras*, L. R. 3 Eq. 173; *exp. Rector of Liverpool*, L. R. 11 Eq. 15; *exp. Rector of St. Martin's*, L. R. 11 Eq. 23.

(*z*) *Post*, p. 70.

(*a*) 8 & 9 Vic. c. 18, s. 69; *re Soury*, 21 W. R. 718.

(*b*) *Re Hobson*, 7 Ch. D. 708; *re East*, 2 W. R. 111.

*trust* is an infant (*c*). If, however, they have no power of sale, the fund will not be paid out (*d*), unless the beneficiaries are *sui juris* and join in the application (*e*).

Charities.

Trustees of charities are also persons "absolutely entitled" (*f*), and the fund may be paid to them without the consent of the Charity Commissioners (*g*).

Dower.

A dowress is entitled to have the value of her right of dower, as determined by valuers, paid out of the fund (*h*).

Adverse possession.

Where the occupant of the land taken has a possession which would have ripened into a title by adverse possession but for the dealings with the company, the Court will direct the purchase money to be paid out to such occupant (*i*).

Tenant for life of manor.

Where the fund was paid in respect of copyholds enfranchised under the provisions of the Act, it was held that the tenant for life of the manor was not entitled to any portion of such monies as fines payable to him under the provisions for enfranchisement contained in the Copyhold Acts, 1852 and 1858 (*j*).

Payment out of art.

Where a good title to only part of the land taken is shown, a proportionate part of the purchase-money will be paid out (*k*).

Persons entitled to commonable rights.

Where there are commonable rights over the land taken, the Court will direct an inquiry as to what part of the fund is to be appropriated in respect of such rights,

(*c*) *Re Gooch*, 3 Ch. D. 742; but see *re Reaston*, L. R. 13 Eq. 564.

(*d*) *Re Horwood*, 3 Giff. 218; but see *re Illman*, 18 W. R. 962, where he trustees had power to give receipts.

(*e*) *Re Sowry*, L. R. 8 Ch. 736.

(*f*) *Re Spurstowe*, L. R. 18 Eq. 279; *exp. Tid St. Giles*, 17 W. R. 758.

(*g*) *Re Lister's Hospital*, 6 D. M. & G. 184; *Holme v. Guy*, 5 Ch. D.

901; but see *re Faversham*, 10 W. R. 291; *re Poplar School*, 8 Ch. D. 543.

(*h*) *Re Hall*, L. R. 9 Eq. 179.

(*i*) *Re Evans*, 42 L. J. Ch. 357; *exp. Winder*, 6 Ch. D. 696; *re Perry*, 1 Jur. N. S. 917; but see *exp. Hollinsworth*, 19 W. R. 580.

(*j*) *Re Wilson*, 3 De G. J. & S. 410.

(*k*) *Re Perkes*, 7 Rly. Ca. 625.

and will settle a scheme for its application (l). The compensation paid in respect of rights of common will be divided between the copyhold and freehold tenants of the manor (m); but the occupiers or tenants of such copyholders and freeholders are not entitled to share in the fund (n). Where the rights of common belonged to resident freemen of a borough, they were held entitled to the dividends only, and not to the *corpus* of the fund (o).

The fund will not be paid out to a tenant in tail, <sup>Tenant in tail.</sup> except upon production to the registrar of a properly executed disentailing deed (p); but where the fund is under £200, a disentailing deed has been held to be unnecessary (q). There have been many cases in which sums over £200 have been paid out without a disentailing deed (r); but the weight of authority, the latest decisions, and the present practice are all in favour of requiring a deed. There appear to be no reported cases, in which a deed has been required, where the fund was under £200.

Where the fund belongs to a married woman it will be <sup>Married woman.</sup> paid out to her or her husband, without deed acknowledged, on her electing by examination in Court to take the money as personalty (s). Where the fund was only

(l) *Exp. Great Northern Rly. Co.*, 6 Rail. Ca. 738.

(m) *Fox v. Amhurst*, L. R. 20 Eq. 403.

(n) *Austin v. Amhurst*, 7 Ch. D. 689.

(o) *Nash v. Coombs*, L. R. 6 Eq. 51.

(p) *Re Reynolds*, 3 Ch. D. 61; *re Broadwood*, 1 Ch. D. 438; *re Butler*, L. R. 16 Eq. 479; *re Norcop*, 31 L. T. N. S. 85; and see *re Smyth*, Ir. R. 10 Eq. 66: where the conflicting decisions are reviewed and considered.

(q) *Re Watson*, 10 Jur. N. S. 1011; *re Tylden*, 11 W. R. 869;

*Sowry v. Sowry*, 8 W. R. 339.

(r) *Re Holden*, 1 H. & M. 445; *re Tyler*, 8 W. R. 540; *re Holden*, 10 Jur. N. S. 308; *Notley v. Palmer*, L. R. 1 Eq. 241; *re Row*, L. R. 17 Eq. 300; *re Wood*, L. R. 20 Eq. 372.

(s) *Exp. Ellison*, 2 Y. & C. Ex. 528; *re Hayes*, 9 W. R. 769; *Gibbons v. Kibbey*, 10 W. R. 55; *Standering v. Hall*, 11 Ch. D. 652; *re Robin*, W. N. (1879), 95.

£50, on the petition of the husband and wife, her examination was also dispensed with (*t*). An affidavit of no settlement is necessary (*u*).

**Lunatic.** Where the fund in Court belongs to a lunatic, it may, by an order in the Chancery Division, be directed to be carried over to the credit of the lunacy (*x*); or it may, by an order in the Chancery Division and in Lunacy, be applied in the purchase of a government annuity (*y*).

*Sums under £200—ss. 71, 72.*

**Sums over £20 and under £200.** If the purchase-money or compensation shall not amount to £200, but shall exceed £20, it shall be either paid into the bank and applied as aforesaid, or may be paid to two trustees to be nominated in writing by the parties entitled to the rents and profits; but such last mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to trustees shall be applied in the manner hereinbefore directed with respect to money paid into the bank, without any order of the Court for that purpose (*z*).

**Sums under £20.** If such money shall not exceed £20, it shall be paid to the parties entitled to the rents and profits, for their own use and benefit; or, in case of their disability, it shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons (*a*).

**Small balance.** Where it was probable that, after investment, a small balance would be left, the Court ordered the balance, if less than £20, to be paid out to the tenant for life (*b*); and a balance of £30 was paid out to a tenant for life, on

(*t*) *Re Clarke*, 13 W. R. 401.

(*u*) See *ante*, p. 30.

(*x*) *Re Milnes*, 1 Ch. D. 28.

(*y*) *Re Brewer*, 1 Ch. D. 409.

(*z*) 8 & 9 Vic. c. 18, s. 71; *re Kinsey*, 1 N. R. 303.

(*a*) 8 & 9 Vic. c. 18, s. 72.

(*b*) *Exp. Rector of Loughton*, 5



an undertaking by him to lay it out in lasting improvements (c).

*Compensation to tenant for life—s. 73.*

All sums exceeding £20 payable under a contract with a person not absolutely entitled are to be paid into the bank or to trustees in manner aforesaid; and such person shall not retain any portion of such sums or any sum paid in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorising the taking of such lands, but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession, as in remainder, reversion, or expectancy. But the Court or the said trustees, may allot to any tenant for life, or person having a partial or qualified estate, for his own use, a portion of the sum so paid, as compensation for any injury, inconvenience, or annoyance, which he may be considered to sustain independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works (d).

Moneys received by a tenant for life as compensation for personal annoyance, or for supporting or not opposing a bill, are within this section; and he is a trustee of the same for himself and the persons entitled in remainder (e), even though paid to him for his exclusive use and bene-

What moneys  
are within the  
section.

Rly. Ca. 591; *re Egremont*, 12 Jur. 618; *re Bateman*, 21 L. J. Ch. 415; but see *exp. Vicar of Bredicot*, 5 Rly. Ca. 209.

(c) *Exp. Barrett*, 19 L. J. Ch. 415; *re Hitchin*, 1 W. R. 605; but

see *re Bateman*, 21 L. J. Ch. 451.

(d) 8 & 9 Vic. c. 18, s. 73.

(e) *Pole v. Pole*, 2 Dr. & S. 420; *Taylor v. Chichester Rly. Co.*, L. R. 4 H. L. 628, 643; *re D. of Marlborough*, 13 Jur. 738.

fit (*f*). The Court has however power to allot a portion of such moneys to him for his own use (*g*); and he is entitled to be repaid thereout his costs, charges, and expenses, properly incurred, in carrying out the duty imposed upon him by the Act (*h*). Thus, he has been allowed the costs of an unnecessary arbitration (*i*); of the negotiations for a sale by private contract, previous to arbitration (*k*); of an unsuccessful attempt to obtain compensation (*l*); of making new roads (*m*); and of necessary alterations in the fences and distribution of glebe lands (*n*); but he will not be allowed his costs of opposing the bill (*o*); unless, it seems, the trustees concurred in such opposition (*p*).

Where the lord of a manor was tenant for life, it was held that he was not entitled to any part of the fund as compensation for the enfranchisement of copyhold land taken by the company (*q*).

*Application of moneys arising from Leases and  
Reversions—s. 74.*

Where any purchase-money or compensation is paid into Court in respect of any lease, or any estate in lands less than the whole fee simple, or of any reversion dependent on such lease or estate, it shall be lawful for the Court, on the petition of any parties interested in such

(*f*) *Shrewsbury v. N. Staffordshire Rly. Co.*, L. R. 1 Eq. 593, 608.

(*g*) *Re Collis*, W. N. (1866), 167; *Taylor v. Chichester Rly. Co.*, L. R. 4 H. L. 643; *exp. Rector of Steeping*, 14 Beav. 159 n.

(*h*) *Re Berkeley*, L. R. 10 Ch. 56.

(*i*) *Re Aubrey*, 1 W. R. 464; *exp. Curate of Whitworth*, 24 L. T. N. S. 126.

(*k*) *Re Oldham*, W<sup>J</sup> N. (1871),

190.

(*l*) *Re Strathmore*, L. R. 18 Eq. 338.

(*m*) *Re D. of Marlborough*, 13 Jur. 738.

(*n*) *Exp. Rector of Steeping*, 5 Rly. Ca. 207; *exp. Lockwood*, 14 Beav. 158.

(*o*) *Re Berkeley*, L. R. 10 Ch. 56.

(*p*) *Re Nicoll*, W. N. (1878), 154.

(*q*) *Re Wilson*, 32 L. J. Ch. 191.

money, to order the same to be laid out, invested, accumulated, and paid in such manner as the Court may consider will give to the parties interested in such money the same benefit therefrom as they would lawfully have had from the lease, estate, or reversion, in respect of which such money shall have been paid, or as near thereto as may be (r).

"Lease" includes an agreement for a lease(s); and a remainderman is a "party interested," and should be made a respondent to the petition(t).

The Court has declined to apportion the purchase-money between lessor and lessee(u); but it will, by reference to chambers, ascertain the value of a lessee's interest(x).

A tenant for life of leaseholds is entitled to have a deficiency of income made up out of *corpus*(y); and so is an annuitant(z). For this purpose, a government annuity, equal to the rent reserved, has been ordered to be purchased(a); and it has been referred to an actuary to ascertain what amount should be paid out of capital(b). In other cases, the fund has been divided by the number of years which the lease had to run, and the quotient paid each year to the tenant for life(c). The costs of annual sales of stock to make up a deficiency have been ordered to be paid by the company(d).

(r) 8 & 9 Vic. c. 18, s. 74.

(s) *Ibid.* s. 3.

(t) *Re Crane*, L. R. 7 Eq. 322.

(u) *Exp. Ward*, 2 De G. & S. 4.

(x) *Brandon v. Brandon*, 2 Dr. & S. 305; *re North London R. C.*, *ibid.* 312.

(y) *Jeffreys v. Connor*, 28 Beav. 328; *Askew v. Woodhead*, W. N. (1879), 188; but see *re Birch*, 10 Jur. N. S. 673.

(z) *Exp. Wilkinson*, 3 De G. & S. 633.

(a) *Re Pfleger*, L. R. 6 Eq. 426.

(b) *Re Phillips*, L. R. 6 Eq. 250.

(c) *Re Money*, 2 Dr. & S. 94; *re Treacher*, 18 L. T. N. S. 810; *Littlewood v. Pattison*, 10 Jur. N. S. 875; *re Pfleger*, L. R. 6 Eq. 426; but see *Askew v. Woodhead*, W. N. (1879), 188.

(d) *Re Long*, 1 W. R. 226.

A tenant for life of renewable leaseholds is not entitled to be recouped a deficiency of income out of *corpus* (e); but he is entitled to any fund which has been reserved for the purpose of renewal, if renewal has become impossible (f).

A tenant for life of lands subject to a lease is only entitled to the amount of the rent reserved, though the lease was granted at a rack rent (g).

Ecclesiastical  
property.

Where the lands taken belong to an ecclesiastical corporation and are subject to a lease, the whole of the dividends will not be paid to such corporation, except under special circumstances (h). The residue, after payment of a sum equal to the rent reserved, will be accumulated till the lease falls in (i); and where such lands are taken upon the condition that the lessee continues to pay rent, the whole of the dividends will be accumulated (k). Where such lease is renewable, the dividends, or residue of dividends, will be accumulated until the time of renewal arrives (l); and whenever the lease would have been renewed, the lessor is entitled to an amount equal to the fine which would have been then payable (m).

Yearly tenant. A yearly tenant, remaining in possession after notice to

(e) *Re Wootton*, L. R. 1 Eq. 589; *Maddy v. Hale*, 3 Ch. D. 327.

(f) *Morres v. Hodges*, 27 Beav. 625; *re Beaufoy*, 1 Sm. & G. 20; but see *Maddy v. Hale*, *supra*; and *post*, Chap. XVI., *Ecclesiastical Leases*.

(g) *Re Wootton*, L. R. 1 Eq. 589; *re Mette*, L. R. 7 Eq. 72; but see *re Steward*, 1 Drew. 636: decided under special circumstances.

(h) *Re Dean of Westminster*, 26 Beav. 214; *re St. Thomas's Church*, W. N. (1870), 192.

(i) *Exp. Dean of Gloucester*, 19

L. J. Ch. 400; *exp. Dean of Christchurch*, 23 L. J. Ch. 149; *exp. Dean of St. Paul's*, 11 W. R. 482.

(k) *Exp. Dean of Battel*, 21 L. T. 55; *exp. Rector of Lambeth*, 4 Rly. Ca. 231.

(l) *Exp. Bishop of Winchester*, 10 Hare, 137; *exp. Dean of St. Paul's*, 11 W. R. 482.

(m) *Exp. Precentor of St. Paul's*, 1 K. & J. 538; *re Dean of Westminster*, 18 Jur. 1113; *exp. Dean of St. Paul's*, 11 W. R. 482.

treat, is not entitled to any portion of the purchase-money as compensation for his interest(*n*).

*Application of moneys paid in under s. 76.*

If the owner of the land taken, on tender of the Payment in. purchase-money or compensation, refuse to accept the same, or fail to make out a title, or refuse to convey, or is abroad, or cannot be found, or fail to appear on the inquiry before a jury, the purchase-money or compensation may be paid into the bank(*o*); and the land will, upon a deed poll being executed by him, vest in the promoters of the undertaking(*p*).

Upon the petition of any person claiming the money so deposited, or any part thereof, or the lands taken, or any part thereof, the Court may order such money to be invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties claiming such money, or lands, or any parts thereof, and may make such other order as shall seem fit(*q*). Application of money.

A mortgagee or transferee of a mortgage may petition Who may petition. for payment out(*r*); but he can only claim six years' arrears of interest(*s*). The vendor is not entitled to interest on the purchase-money unless the company has taken possession(*t*).

The usual affidavit as to title, and negating ad- Evidence.

(*n*) *Exp. Nadin*, 17 L. J. Ch. 421. For the principle on which an interest dependent upon a contingency will be estimated, see *Penny v. Penny*, L. R. 5 Eq. 227.

(*o*) 8 & 9 Vic. c. 18, s. 76.

(*p*) *Ibid.* s. 77.

(*q*) *Ibid.* s. 78. For cases where payment out has been ordered, see *re*

*Beaufoy*, 1 Sm. & G. 20; *Galliers v. Met. Rly. Co.*, L. R. 11 Eq. 410.

(*r*) *Re Marriage*, 9 W. R. 843.

(*s*) *Re Stead*, 2 Ch. D. 713.

(*t*) *Re Crystal Palace*, 1 Jur. N. S. 995; *Galliers v. Metropolitan R. Co.*, L. R. 11 Eq. 410; *re Marylebone*, 19 W. R. 1058; *Rhys v Dare Rly.*, L. R. 19 Eq. 93.

verse claims, is necessary upon applications under this section (*u*).

Conversion.

Money paid in under the 76th section is to be treated as personalty (*x*).

The Court will, under this section, ascertain the value of the claimant's interest; and, after paying out such value, will pay the residue, if any, to the company (*y*).

*Questions of Title—Person in Possession deemed to be Owner—s. 79.*

If any question arise respecting the title, the parties in possession, or in receipt of the rents, shall be deemed lawfully entitled to the lands until the contrary is shown to the satisfaction of the Court; and unless the contrary is shown, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly (*z*).

The Court is not called upon to decide questions of title. The person in possession is not to be disturbed in his enjoyment, unless the contrary of his title is shown; and a man is not to be put to defend the whole of his property because a small portion has been taken by a company. The company should, however, state the difficulties, though not argue on them (*a*). The section seems

(*u*) *Ante*, p. 59. As to payment to trustees, see *re Reaston*, L. R. 13 Eq. 564, and *ante*, p. 67.

(*x*) *Re Harrop*, 3 Drew. 726, 733; *exp. Flamank*, 1 Sim. N. S. 260; *exp. Hawkins*, 13 Sim. 569.

(*y*) *Brandon v. Brandon*, 2 Dr. & S. 305, 311.

(*z*) 8 & 9 Vic. c. 18, s. 79.

(*a*) *Re Perry*, 1 Jur. N. S. 917; *re St. Pancras*, L. R. 3 Eq. 173, 183; *re Sterry*, 3 W. R. 561. For cases where the contrary was shown, see *re Perks*, 1 Sm. & G. 545; *exp. Hollinsworth*, 19 W. R. 580.

only to apply where the Court is unable to come to a satisfactory conclusion as to who is so entitled (*b*) ; but the Court will ascertain the interest of the petitioner (*c*) ; and, though questions arise as to title, the petition need only be served on the company (*d*).

*Costs—s. 80.*

The 80th section of the Act provides that in all cases of monies deposited under the Act, or any Act, incorporated therewith (except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey, or release, the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required), it shall be lawful for the Court to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the company. (that is to say), the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securities, and of the re-investment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of Court of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings

(*b*) *Exp. Freemen of Sunderland*, 312 ; *re Perks*, 1 Sm. & G. 545 ; 1 Drew. 184, 191. *Bogg v. Midland Rly.*, L. R. 4 Eq.

(*c*) *Brandon v. Brandon*, 2 Dr. & 311.  
S. 305 ; *re North London Rly.*, *ibid.* (*d*) *Re Sterry*, 3 W. R. 561.

relating thereto, except such as are occasioned by adverse litigation between adverse claimants; but the costs of only one application for reinvestment will be allowed, unless it is for the benefit of the parties interested that the money should be invested in land in different sums, and at different times (*e*).

Discretion  
of Court.

It is now, however, immaterial to consider whether any public or private statute, passed prior to the Judicature Act, has made or omitted to make any provision with regard to costs, since the effect of the Judicature Act is to repeal all previous enactments directing costs to follow certain rules (*f*). It would seem, therefore, that the above section is virtually repealed (*g*). But, even if repealed, it is presumed the Court will still exercise its discretion in accordance with the above section, and the cases decided under it.

It has been held that an application for costs only may be made by summons (*h*).

The 80th section applies whether the money is deposited under the prior or subsequent sections (*i*). In dealing with costs the sympathies of the Court are with the landowner, and in doubtful cases it will decide against the company (*k*). The Court has a discretion to refuse a petitioner his costs, though it seems it has no jurisdiction to make him pay costs (*l*); nor has it jurisdiction to make the company pay costs, when the money is not standing to the credit of the matter of the Act (*m*); and in such a

(*e*) 8 & 9 Vic. c. 18, s. 80.

(*f*) *Garrett v. Bradley*, 3 App. Cas. 944.

(*g*) *Exp. Mercers' Co.*, 10 Ch. D. 431; but see *Nock v. Nock*, W. N. (1879), 125; *re Merceron*, 7 Ch. D. 184.

(*h*) *Exp. Incumbent of Guilden Sutton*, 8 D. M. & G. 380.

(*i*) *Exp. Flower*, L. R. 1 Ch. 599.

(*k*) *Re Long*, 10 Jur. N. S. 417; *re Jones*, 4 Jur. N. S. 581.

(*l*) *Re Marylebone*, 19 W. R. 1058; but see *exp. Mercers' Company*, 10 Ch. D. 431.

(*m*) *Brown v. Fenwick*, 14 W. R. 257; *Fisher v. Fisher*, L. R. 17 Eq.



case the petitioner has been ordered to pay the company's costs (*n*).

"Refusal" to be wilful must be capricious, and a reasonable objection, though ultimately overruled, is not wilful (*o*). The inability of a landowner to pay off incumbrances of greater value than the land taken is not a wilful refusal (*p*); but it is a wilful refusal for a vendor to insist upon payment of his costs, as well as the purchase-money, before giving up possession (*q*).

The company is liable to pay the costs of several *interim* investments without any condition as to future permanent investment (*r*). It is also liable to pay brokers' commission; which, it seems, should in the first instance be deducted from the fund in Court (*s*). It is liable for the costs of all proceedings relating to investment and payment of dividends. Thus, it must pay the costs of a power of attorney to receive dividends, and of appearing before the Paymaster-General, and of affidavits filed for the purpose of obtaining payment of dividends (*t*). It must pay the costs of periodical sales of stock, where necessary, to make up the income of a tenant for life (*u*); and, on the death of a tenant for life, it must bear the costs of a second petition for payment of dividends to the

340; *re Lathropp*, 14 W. R. 326; *re Bagot*, 14 W. R. 471; *Nock v. Nock*, W. N. (1879), 125; but see *exp. Mercers' Co.*, *supra*.

(*n*) *Prescott v. Wood*, 37 L. J. Ch. 691.

(*o*) *Re Windsor, &c.*, 12 Beav. 522; *exp. Bradshaw*, 16 Sim. 174; *exp. Rylston*, 15 Jur. 1028; *exp. Dashwood*, 3 Jur. N. S. 103; *exp. Lawson*, 17 W. R. 186.

(*p*) *Re Crystal Palace*, 1 Jur. N. S. 995.

(*q*) *Re Turner*, 10 W. R. 128.

(*r*) *Reading v. Hamilton*, 5 L. T. N. S. 628; *re Blyth*, L. R. 16 Eq. 468; *re Sewart*, L. R. 18 Eq. 278.

(*s*) *Exp. Trinity House*, 3 Hare, 95; *exp. Braithwaite*, 17 Jur. 753; *exp. Harborough*, *ibid.* 1045. The present practice, however, is not to deduct brokerage, see *Seton*, 1419.

(*t*) *Exp. Incumbent of Guilden Sutton*, 8 De G. M. & G. 380; *exp. Eccles. Commrs.*, 89 L. J. Ch. 623.

(*u*) *Re Long*, 1 W. R. 226; *exp. Edmunds*, 14 W. R. 507.

person subsequently entitled (*x*); and of a second petition for payment of dividends to new trustees, where such is necessary, owing to change of circumstances, or to a defect in the first petition (*y*). Upon a petition for *interim* investment, the costs of persons having charges on the inheritance prior to the life estate will not be allowed as against the company (*z*), nor will the costs of remainderman (*a*).

#### Redemption.

The company are liable to pay the costs of the application of the purchase-money in the redemption of land-tax (*b*); and of a second such application (*c*); but it is not liable to pay the costs of redeeming mortgages (*d*), except under special circumstances (*e*); nor of buying up a lease on other lands of the petitioner (*f*).

#### Reinvestment.

The company is liable to pay the costs of reinvestment in land, though the petitioner is absolutely entitled to the purchase-money, and also the costs of resettling such land (*g*); but where the purchase had been completed before the Court had approved of the investment, the company was not made to pay the costs (*h*).

The following are considered costs of reinvestment in land which the company are liable to pay, viz., the costs

(*x*) *Re Jolliffe*, L. R. 9 Eq. 668.

(*y*) *Re Goe*, 3 W. R. 119; *re Metropolitan Rly.*, W. N. (1876), 245; *re Shakespeare Walk School*, 12 Ch. D. 178; but see *re Pryor*, W. N. (1876), 141.

(*z*) *Re Morris*, L. R. 20 Eq. 470.

(*a*) *Re Dowling*, 24 W. R. 729.

(*b*) *Re Bethlem Hospital*, L. R. 19 Eq. 457; and cases there cited.

(*c*) *Re London, Brighton, &c.*, 18 Beav. 608.

(*d*) *Re Mark*, W. N. (1877), 63; *re Manchester, &c.*, 21 Beav. 162; *exp. Sheffield Town*, 8 W. R. 602;

*exp. Earl Hardwicke*, 17 L. J. Ch. 422; and see *re Yeates*, 12 Jur. 279, as to the mortgagee's costs.

(*e*) *Re London & South W. Rly.*, 2 J. & H. 390; *exp. Bishop of London*, 2 De G. F. & J. 14.

(*f*) *Re Manchester, &c.*, 21 Beav. 162; but see *exp. Dean of Manchester*, 28 L. T. N. S. 184.

(*g*) *Re Jones*, 39 L. J. Ch. 190; *re Dodd*, 19 W. R. 471; *re Parker*, 20 W. R. 289; *re De Beauvoir*, 2 De G. F. & J. 5.

(*h*) *Re Bouverie*, 5 Rly. Ca. 431.

of enfranchisement of copyholds (*i*); of building or rebuilding houses on the estate (*k*); of building a vicarage (*l*); of improving the supply of water to a town (*m*); of purchasing freeholds with the proceeds of leaseholds (*n*).

The following costs, being incidental to investment in land, are payable by the company: viz., the costs of enrolment of the conveyance (*o*); the additional costs caused by the purchase of land which is the subject of a Chancery suit (*p*); the costs of an application for a vesting order rendered necessary by the death of a vendor leaving an infant heir (*q*); the costs of a reference to the conveyancing counsel (*r*). But the company is not liable to pay the costs of another counsel advising on the whole title (*s*); nor the fine for admission payable on investment in the purchase of copyholds (*t*); nor the costs of a certificate as to the completion of buildings sanctioned by the Court (*u*); nor of the vendor's appearance on the petition (*x*); nor any costs beyond those which, in an open contract, would be purchaser's costs (*y*).

The company is liable to pay the costs of several and successive investments, where they are not unreasonable or vexatious (*z*); and though the sum invested on

Costs incidental to investment.

Several reinvestments.

(*i*) *Dixon v. Jackson*, 25 L. J. Ch. 588.

(*k*) *Re Leigh*, L. R. 6 Ch. 887.

(*l*) *Re Incumbent of Whitfield*, 1 J. & H. 610.

(*m*) *Re Lathropp*, L. R. 1 Eq. 467.

(*n*) *Re Parker*, L. R. 13 Eq. 495.

(*o*) *Re Christ's Hospital*, 12 W. R. 669.

(*p*) *Carpmael v. Proffit*, 17 Jur. 875.

(*q*) *Re Lowry*, L. R. 15 Eq. 78; and see *post*, p. 87.

(*r*) *Re Jones*, 6 W. R. 762.

(*s*) *Ibid*.

(*t*) *Exp. Vicar of Sawston*, 6 W. R. 492.

(*u*) *Exp. Rector of Shipton*, 19 W. R. 549.

(*x*) *Re Dylar*, 1 Jur. N. S. 975.

(*y*) *Re Christ's Hospital*, L. R. 20 Eq. 605; *re Temple Church*, 26 W. R. 259; *re Mason*, W. N. (1872), 77; *exp. Incumbent of Al-sager*, 2 W. R. 324.

(*z*) *Re St. Katherine's Dock*, 3 Rly. Ca. 514; *re Merchant Taylors*, 10 Beav. 485; *exp. St. Bartholomew's*, 4 Drew. 425; *exp. Eton*

the second purchase is very small, and is only part of the balance (a). In some cases leave has been given to apply in chambers as to investments of the balance (b). The costs of a second reinvestment in the redemption of land-tax have also been ordered to be paid by the company (c).

Abortive  
purchases.

The costs of *bond fide* negotiations for a purchase, approved of by the Court, but which could not be completed, are payable by the company; *secus*, if the proposed purchase was not sanctioned by the Court (d). The company are entitled to have the words "upon the approval and execution of the conveyance," inserted in the order for payment of costs (e).

Investment  
with other  
moneys.

Where a larger sum is invested than has been paid in, the Court will direct that the costs payable by the company shall not be thereby increased (f).

Payment out.

The company must bear the costs of payment out; and when several persons are entitled, each party interested may present a petition, and the company must pay the costs (g). A transfer from the matter to a cause, or from one account to another, is treated as a payment out with regard to costs (h); and upon petition for payment out, each person entitled may appear separately,

*Coll.*, 3 Rly. Ca. 271; *exp. Bouvrie*, 4 Rly. Ca. 229; *re Hereford, &c.*, 13 W. R. 134; *re Paddon*, W. N. (1878), 65.

(a) *Exp. Rector of Loughton*, 5 Rly. Ca. 591; *re Brandon*, 2 Dr. & S. 162.

(b) *Re Dunraven*, 10 W. R. 56; *re Lapworth*, W. N. (1879), 37.

(c) *Re London, Brighton, &c.*, 18 Beav. 608.

(d) *Exp. Rector of Holywell*, 2 Dr. & S. 463; *re Carney*, 20 W. R. 407; *exp. Manchester Burial Board*, W. N. (1866), 117.

(e) *Exp. Eton Coll.*, 7 W. R. 710.

(f) *Re Brammer*, 14 Jur. 236; *re Loveband*, 9 W. R. 12; *exp. Hodge*, 16 Sim. 159; *exp. King's Coll.*, 5 De G. & S. 621; *exp. Newton*, 4 Y. & C. 518; *Att.-Gen. v. Rochester*, 15 W. R. 765; *exp. Eccles. Commrs.*, 13 W. R. 575; *re Power*, W. N. (1876) 205.

(g) *Re Nicoll*, W. N. (1866), 93.

(h) *Re Adams*, W. N. (1871) 159; *re Bristol School*, 47 L. J. Ch. 317; *Eden v. Thompson*, 2 H. & M. 6; *Melling v. Bird*, 17 Jur. 155.

unless represented by the same solicitor (*i*); but the costs of two petitions for payment out will not be allowed against the company where presented by the same petitioners claiming under different instruments (*k*).

The company must pay all additional costs incurred by reason of the land taken being the subject of an administration suit (*l*); or by reason of the land taken belonging to a lunatic (*m*).

The company must pay the costs of a disentailing deed, where such a deed is required (*n*).

It seems that the company is liable to pay the costs of appearance of all parties to the suit, even though the application is only for transfer of the fund to the credit of a cause (*o*); *a fortiori*, therefore, it must pay such costs where the petition is for confirmation of a contract, payment out, or reinvestment (*p*); and it must also pay the costs of remaindermen having liberty to attend the proceedings (*q*).

Parties who have a right to appear, may appear separately, and are entitled to their costs against the company, unless such separate appearances are oppressive and vexatious (*r*).

The costs of *trustees* will be allowed against the

(*i*) *Re Long*, 10 Jur. N. S. 417; *Haynes v. Barton*, 14 W. R. 257; *re Brandon*, 2 Dr. & S. 162.

(*k*) *Re Pattison*, 4 Ch. D. 207.

(*l*) *Picard v. Mitchell*, 12 Beav. 486; *Henniker v. Chafy*, 28 Beav. 621; *re Hull, &c.*, 5 Rly. Ca. 458; *Eden v. Thompson*, 2 H. & M. 6.

(*m*) *Re Briscoe*, 2 De G. J. & S. 249; *re Taylor*, 1 Mac. & G. 210; *re Walker*, 7 Rly. Ca. 129.

(*n*) *Re Brooking*, 2 Giff. 31; *exp. Vaudrey*, 3 Giff. 224.

(*o*) *Re Adams*, W. N. (1871),

159; *Dinning v. Henderson*, 2 De G. & S. 485; but see *Eden v. Thompson*, 2 H. & M. 6; *Melling v. Bird*, 17 Jur. 155; *Sidney v. Wilmer*, 31 Beav. 338.

(*p*) *Haynes v. Barton*, L. R. 1 Eq. 422; *re Brandon*, 2 Dr. & S. 162; *re Hull, &c.*, 5 Rly. Ca. 458.

(*q*) *Paterson v. Paterson*, 10 L. T. N. S. 183.

(*r*) *Exp. Braye*, 11 W. R. 333; *re Nicoll*, 14 W. R. 475; *re Long*, 10 Jur. N. S. 417.

company (s); except on an application for *interim* investment (t); unless they represent the immediate freehold (u).

Upon a petition for reinvestment in land, where there are *mortgagees* or annuitants whose rights are not otherwise affected by the petition, the rule is to serve them with a copy of the petition, and to tender them 40s. for costs, with an intimation that, if they appear, they will be liable to pay their own costs (v). The rule also applies to petitions for payment out; and in addition to the 40s., the cost of an affidavit of service will be allowed as against the company (w).

Where the petition is for *interim* investment and payment of dividends, incumbrancers should not be served; and if served, their costs will not be allowed against the company (x), unless, *semble*, they are in possession (y); nor should a mortgagee of another part of the property be served with a petition for application of the fund in discharge of his incumbrance (z). The company is not liable to pay the costs of mortgagees, whose incumbrances are created after the payment into Court (a).

Remaindermen should not be served with a petition for investment or payment out, except under special circumstances (b); but they should be served with a petition under sect. 74, and will be allowed their costs against the company (c); and they should also be served

(s) *Re Duke of Cleveland*, 1 Dr. & S. 48; *Henniker v. Chafy*, 35 Beav. 124; *re Burnell*, 12 W. R. 568; *re Bowes*, 12 W. R. 929; *re Pattison*, 4 Ch. D. 207.

(t) *Re Dowling*, 24 W. R. 729.

(u) *Re Finch*, 14 W. R. 472.

(v) *Re Gore Langton*, L. R. 10 Ch. 328; *ante*, p. 13.

(w) *Re Halstead Charities*, L. R.

20 Eq. 48.

(x) *Re Morris*, L. R. 20 Eq. 470.

(y) *Re Hungerford*, 3 K. & J. 455.

(z) *Re Yeates*, 12 Jur. 279.

(a) *Re Jones*, 18 W. R. 312.

(b) *Exp. Staples*, 1 D. M. & G. 294; *re Dowling*, 24 W. R. 729; *re Bowes*, 10 Jur. N. S. 817, 818.

(c) *Re Crane*, L. R. 7 Eq. 322.

where the petition is for investment in building or improvements (*d*).

The company are liable to pay the costs of appearance of a bishop, where vicarage lands are taken (*e*); of the Attorney-General, on a petition, under Sir S. Romilly's Act (*f*); of freemen of a city, where corporation lands are taken (*g*); but not of the governors of Queen Anne's Bounty (*h*); nor of the Ecclesiastical Commissioners, their consent in writing being sufficient (*i*).

The costs of two petitions will not be allowed against the company, though the fund has been dealt with by two different branches of the Court (*k*), and though the fund has been paid in by different companies (*l*). Costs of two petitions.

The words, "except such as are occasioned," in sect. 80, Litigation. refer to "costs," and not to "proceedings" (*m*). The order providing for payment of costs usually excepts costs of litigation, unless it is clear there are no such costs (*n*); and in a simple case such costs should be specified (*o*).

It has been held that the exception only applies where an action has been brought to decide the rights of the parties (*p*); and not to a question of construction decided on petition (*q*); nor where difficulties arise, and expense

(*d*) *Re Leigh*, L. R. 6 Ch. 887.

(*e*) *Exp. Vicar of Creech*, 21 L. J. Ch. 677.

(*f*) *Re London, Brighton, &c.*, 18 Beav. 608.

(*g*) *Exp. Mayor of Lincoln*, 6 Rly. Ca. 738.

(*h*) *Re Incumbent of Whitfield*, 1 J. & H. 610.

(*i*) *Exp. Bp. of London*, 2 De G. F. & J. 14; *exp. Dean of Manchester*, 28 L. T. N. S. 184; but see *re Brailey*, W. N. (1866) 109.

(*k*) *Re Gore Langton*, L. R. 10 Ch. 328; *re Pattison*, 4 Ch. D. 207; *re Butterfield*, 9 W. R. 805.

(*l*) *Exp. Broke*, 11 W. R. 505.

(*m*) See *ante*, p. 78.

(*n*) *Re Cant*, 1 D. F. & J. 153; *re Courts of Justice*, W. N. (1868), 124; *re Tookey*, 16 Jur. 708.

(*o*) *Re Longworth*, 1 K. & J. 1; *exp. Palmer*, 13 Jur. 781.

(*p*) *Exp. Palmer*, 13 Jur. 781; *re Tookey*, 16 Jur. 708; *re Hore*, 5 Rly. Ca. 592, but see *Askew v. Woodhead*, W. N. (1879), 188.

(*q*) *Re Gregson*, 2 H. & M. 504; *re Tookey*, *supra*; *re Bagot*, 10 W. R. 607; *re Woodburn*, 31 L. T. N. S. 237; but see *re Longworth*, 1 K. & J. 1; *exp. Styan*, Johns.

s incurred in ascertaining the rights and shares of parties (*r*).

On the ground of their being costs of litigation, the company has been held not liable, where the money was paid in, owing to two adverse claims, though one was subsequently abandoned (*s*); nor of a second application, rendered necessary by disputes between the petitioner and his incumbrancer (*t*); nor of a suit caused by the death of the vendor intestate leaving an infant heir (*u*).

Several  
companies.

Where the funds have been paid in by several companies, the costs of payment out will be borne by the companies equally (*x*); and the costs of reinvestment will also be borne equally, except the costs of the stamp on the conveyance and the surveyor's fee, which will be borne rateably (*y*). Where, however, such a course would be unjust or oppressive, the costs will be ordered to be paid rateably according to the amounts paid in (*z*). Where companies have amalgamated after payment in, the costs will be paid by the subsisting companies equally (*a*).

Insolvent  
company.

Where a company became insolvent, leaving the costs unpaid, upon petition of the vendor, who was entitled for

387; *re Cant*, 1 D. F. & J. 153; *exp. Yates*, 17 W. R. 872; *exp. Cooper*, 2 Dr. & S. 312, 320; *re Hayne*, 13 W. R. 492.

(*r*) *Re Singleton*, 11 W. R. 871; *re Spooner*, 1 K. & J. 220; but see *Askew v. Woodhead*, W. N. (1879), 188.

(*s*) *Re English*, 13 W. R. 932; and see *re Butterfield*, 9 W. R. 805; but see *Duke of Norfolk*, 22 W. R. 817.

(*t*) *Re Jolliffe*, 3 Jur. N. S. 633.

(*u*) *Armitage v. Askham*, 1 Jur. N. S. 227; but see *ante*, p. 81.

(*x*) *Exp. Gaskell*, 2 Ch. D. 360; *exp. Eccles. Commrs.*, W. N.

(1873), 173.

(*y*) *Exp. Bp. of London*, 2 D. F. & J. 14; *exp. Corporation of London*, L. R. 5 Eq. 418; *exp. Eccles. Commrs.*, 13 W. R. 575; *Att.-Gen. v. Rochester*, 15 W. R. 765; *re Leigh*, L. R. 6 Ch. 887; *re Power*, W. N. (1876), 205; *exp. Christ's Hos.*, 27 W. R. 456.

(*z*) *Exp. St. Bartholomew's Hos.*, L. R. 20 Eq. 369; *exp. Christ's Hos.*, 2 H. & M. 166; *exp. Christ Church*, 9 W. R. 474; *re Byron*, 1 D. J. & S. 358.

(*a*) *Exp. Gaskell*, 2 Ch. D. 360; *exp. Corpus Christi Coll.*, L. R. 13 Eq. 334.



life as rector, they were ordered to be paid out of the purchase money (b).

Costs under special Acts are now in the discretion of Special Acts. the Court, whether such provide, or omit to provide for such costs (c).

### *Taxation of Conveyancing Costs*—sect. 83.

The costs of all conveyances of lands purchased, as dis- Sect. 82. tinguished from lands taken compulsorily, must be borne by the company; and such costs include all charges and expenses of the vendor, as well as of the purchaser, of all assurances of outstanding terms or interests therein, of abstracts and attested copies, and all other reasonable expenses incident to the investigation, deduction, and verification of the title (d).

In case of disagreement, such costs shall be taxed upon Sect. 83. an order of the Court, to be obtained upon petition of course by either of the parties; and the company shall pay such costs; or in default the same may be recovered in the same way as any other costs payable under an order, or by distress (e); and the expense of taxation shall be paid by the company, unless one-sixth is disallowed (f).

The company is, it seems, liable to pay the costs of a suit or other proceeding rendered necessary by the death of the vendor (g); or of taking out administration for the

(b) *Re Great Yeldham*, L. R. 9 Eq. 68.

(c) *Exp. Mercers' Co.*, 10 Ch. D. 481; but see *re Mercer*, 7 Ch. D. 184.

(d) 8 & 9 Vict. c. 18, s. 82; and see *re Spooner*, 1 K. & J. 220.

(e) 8 & 9 Vict. c. 18, s. 53.

(f) *Ibid.*, s. 83; Seton, 1448.

(g) *Lake v. Eastern Counties Rly.*, 19 L. T. 323; *exp. Cave*, 26 L. T. 176; *re Nash*, 4 W. R. 111; *re Manchester Rly.*, 19 Beav. 365; *re Lowry*, L. R. 15 Eq. 78; but see *Purser v. Darby*, 4 K. & J. 41; *Midland Rly. v. Wescomb*, 2 Rly. Ca. 211; *Eastern Counties Rly. v. Tufnell*, 3 Rly. Ca. 133; *Scott v.*

purpose of conveying (*h*); or of apportioning ground rents (*i*).

*Entry before Purchase—Repayment of Deposit—sect. 87.*

Sects. 85, 87. The company may enter upon the lands before an agreement has been come to, an award made, or a verdict given, upon payment into Court of the amount claimed or the value of the lands, and upon delivery or tender of a bond for securing the payment of the purchase money or compensation and interest at the rate of £5 per cent. (*k*). The money so deposited may, on the application by petition of the promoters (*l*), be ordered to be invested in Bank Annuities or Government securities, and accumulated; and, upon the condition of the bond being fully performed, the Court may, upon a like application, order the money so deposited and the accumulations thereon to be repaid or transferred to the promoters; or if such bond shall not be fully performed, the Court may order the same to be applied as it shall think fit, for the benefit of the parties for whose security it has been deposited (*m*).

Vendor's lien. The vendor is not deprived of his lien on the land by the entry of the company (*n*); but he has no lien on the deposit for his costs (*o*).

*Scott*, 11 W. R. 766; *exp. Phillips*, *ibid.*, 54; *ante*, p. 86.

(*h*) *Re Liverpool*, L. R. 5 Eq. 282.

(*i*) *Exp. Buck*, 1 H. & M. 519; but see *exp. Flower*, L. R. 1 Ch. 599.

(*k*) 8 & 9 Vict. c. 18, s. 85. *Field v. Carnarvon Rly.*, L. R. 5 Eq. 190; *Walker v. Ware Rly.*, L. R. 1 Eq. 195; *Willey v. South Eastern Rly.*, 1 Mac. & G. 58.

(*l*) For definition of "promoters," see s. 2.

(*m*) 8 & 9 Vict. c. 18, s. 87.

(*n*) *Walker v. Ware, &c.*, L. R. 1 Eq. 195; *Wing v. Tottenham, &c.*, L. R. 3 Ch. 740; *Betty v. London, &c.*, W. N. (1867), 169.

(*o*) *Exp. Stevens*, 2 Phil. 772; *exp. London, Chatham, &c.*, W. N. (1868), 75.

The deposit will be paid out to the company without deducting the costs payable by them to the vendor; and although such costs remain unpaid (*p*); and although the landowner has taken proceedings to set aside the award (*q*); and although the company has not paid or deposited the compensation awarded in respect of minerals (*r*).

It is sufficient if the petition is stamped with the company's seal; the seal need not be verified; and payment may be ordered to the secretary of the company (*s*).

The company will be ordered to pay interest at £5 per cent., according to the bond, from the date of taking possession, although the deposit has never been invested (*t*).

The production of the bond by the company is sufficient evidence that the condition has been fully performed (*u*).

In the event of non-performance of the condition of the bond, the Court has jurisdiction to order payment out of the deposit to the landowner on a petition presented by him for that purpose adversely to the company (*x*).

A petition for investment under this section need not be served on the landowner (*y*); though it would seem that a petition for repayment of the deposit should be so served (*z*); but if it is clear that the bond has been fully performed, or if the landowner consents to the appli-

(*p*) *Exp. Great Northern Rly.*, 16 Sim. 169; *exp. Stevens*, 2 Phil. 772; *exp. London, Chatham, &c.*, W. N. (1868), 75; *re Neath, &c.*, L. R. 9 Ch. 263; *re Birmingham, &c.*, 3 N. R. 290.

(*q*) *Re Fooks*, 2 Mac. & G. 357.  
(*r*) *Re Neath, &c.*, 2 Ch. D. 201.

(*s*) *Exp. London Chatham, &c.*, 8 W. R. 636; *ante*, p. 49.

(*t*) *Re Wolff*, W. N. (1868), 66.

(*u*) *Re North-Western Rly.*, 26

L. T. N. S. 687.

(*x*) *Re Mutlow*, 10 Ch. D. 131. As to the rights of the landowner's mortgagees, see *Martin v. London, Chatham, &c.*, L. R. 1 Ch. 501.

(*y*) *Exp. Carmarthen, &c.*, 2 N. R. 515.

(*z*) *Exp. Stevens*, 2 Phil. 772; *exp. South Wales Rly.*, 6 Rly. Ca. 151; but see *re Tottenham, &c.*, 14 W. R. 669; *re Neath, &c.*, L. R. 9 Ch. 263.

Deposit: when paid out.

Evidence.

Petition by landowner.

Service.

cation, he should either be made a co-petitioner (a), or a tender of 40s. should be made to him (b).

Costs.

The provisions of the 80th section as to costs apply to moneys paid in under the 85th section (c).

### *Inclosure Act.*

**Inclosure Act.** The Commons Inclosure Act contains provisions with regard to the investment and application of moneys paid in under it, similar to the 69th and 70th sections of the Lands Clauses Consolidation Act (d). The practice under the latter Act is therefore generally applicable to applications under the former.

(a) *Re Holman*, W. N. (1877), 599; *exp. Morris*, L. R. 12 Eq. 272. 418.

(b) *Exp. South-Western Rly.*, (d) 8 & 9 Vict. c. 118, ss. 134, 38 L. J. Ch. 527; *ante*, p. 13. 137-140. Compare *Lands Clauses*

(c) *Exp. Flower*, L. R. 1 Ch. Act, ss. 69, 70, *ante*.

## CHAPTER VIII.

### DEFENCE ACTS.

WHERE the owner of land taken for military purposes under the Defence Acts is under disability, or is not absolutely entitled, or where a title is not shown within three months after notice, the compensation is to be paid into Court to an account in the matter of the Acts, and of the persons claiming to be interested therein (*a*); and the sum of £30 is, except in cases of delay in deducing a title, to be added for consequent expenses (*b*). Payment in.

The Court may make orders with regard to the investment of such moneys in the public funds, or in Government or real securities, or in the purchase of other lands, or for payment out of principal and income, or for otherwise disposing of the same for the benefit of the persons interested, or for appointing trustees for all or any of such purposes (*c*). Investment and disposition of the money.

The Court was originally empowered to make such orders on petition or motion (*d*), but the application may now be made by summons at chambers (*e*). The former practice, however, does not appear to have been abolished Application, how made.

(*a*) 5 & 6 Vict. c. 94, s. 25; 22 & 23 Vict. c. 21, s. 8; 23 & 24 Vict. c. 112, ss. 22, 46; Daniell, 1934; Seton, 1472.

(*b*) 23 & 24 Vict. c. 112, ss. 21, 46.

(*c*) 5 & 6 Vict. c. 94, s. 26. Compare *Lands Clauses Act*, ss. 69, 70, *ante*.

(*d*) 5 & 6 Vict. c. 94, s. 26.

(*e*) 23 & 24 Vict. c. 112, ss. 23,

and it seems that the application may still be made by petition (*f*).

The application may be made by any person interested in the fund, or in the interest or produce thereof (*g*).

Service.

The petition need not be served on the Secretary for War (*h*); and where the trustees, the tenant for life, and the first tenant in tail were co-petitioners, the petition was not required to be served upon any one (*i*).

Payment to trustees.

The fund may be paid out to trustees (*j*), or may be applied in recouping a tenant in tail the expense of permanent improvements (*k*).

46; *re Maynard*, 7 Jur. N. S. 232; where the Court directed applications under the Act to be made by summons.

(*f*) *Exp. Morshead*, 33 Beav. 254; *re Sadler*, cit. 33 Beav. 257, n.; *re St. John's Coll.*, Seton, 1472; but see *re Maynard*, *supra*.

(*g*) 5 & 6 Vict. c. 94, s. 26.

(*h*) *Re Morshead*, 33 Beav. 254; 10 Jur. N. S. 61.

(*i*) *Ibid.*

(*j*) *Re Morshead*, 33 Beav. 254.

(*k*) *Re D. of Wellington*, 3 D. F. & J. 13; Seton, 1471; but see cases under *Lands Clauses Act*, *ante*, p. 65.

## CHAPTER IX.

### INVESTMENT OF CASH UNDER CONTROL OF THE COURT.

IN certain cases cash under the control of the Court <sup>Applications for investment.</sup> may be invested without an order (*a*), and in others it may be invested in Consols on an order to be obtained on motion or summons at chambers (*b*). But an application for conversion and investment under Lord St. Leonards' Act, 1860, is made by petition.

Cash under the control of the Court may be invested in <sup>What investments allowed.</sup> Bank Stock, East India Stock, Exchequer Bills, and £2 10s. per cent. Annuities, and upon mortgage of freehold and copyhold estates respectively in England or Wales, as well as in Consolidated £3 per cent. Annuities, Reduced £3 per cent. Annuities, and New £3 per cent. Annuities (*c*).

All orders for conversion of Bank Annuities into any other <sup>Who may petition.</sup> of the said funds or securities are to be made upon petition to be presented by any of the parties interested (*d*).

Every petition for the conversion of any £3 per cent. <sup>Service.</sup> Bank Annuities into any other of the stocks, funds, or securities hereinbefore mentioned, shall be served upon

(*a*) Ch. Funds Rules, 1874, rr. 65, 66.

(*b*) Daniell, 1640.

(*c*) Ord. 1st. Feb. 1861, r. 1.

(*d*) 23 & 24 Vict. c. 38, s. 10.

the trustees, if any, of such Bank £3 per cent. Annuities, and upon such other persons, if any, as the Court shall think fit (*e*).

Service on the trustees is, however, only necessary where there is an existing investment in the funds, and the petition is for conversion; and is not necessary where the petition is for investment of cash (*f*).

Service on contingent remaindermen has been dispensed with (*g*).

East India  
stock.

The East India Stock now invested in is the India £4 per cent. Stock (*h*).

Railway stock.

The Court has no jurisdiction to order an investment in Indian Railway Stock (*i*).

Where an order  
will be made.

It is discretionary with the Court whether it will direct a fund under its control to be invested in any other security than Consols; and in the absence of special circumstances the Court will not, as a general rule, direct other investments (*j*). It will not therefore make an order for investment under the Act, if it would be injurious to the remaindermen (*k*); or if the application is made merely for the sake of increasing the income of the tenant for life (*l*); or if infants are interested, unless an increase of income is really necessary (*m*).

But where the petitioner is absolutely entitled in the event of her having no children, and there is little proba-

(*e*) Ord. 1st. Feb. 1861, r. 2.

(*f*) *Re Adams*, 17 L. T. N. S.

641.

(*g*) *Re Price*, W. N. (1872), 159.

(*h*) Seton, 86.

(*i*) *Re Dowling*, 24 W. R. 729;  
*re Sillar*, W. N. (1871), 3; *Green*  
*v. Angell*, W. N. (1867), 305.

(*j*) *Daniell*, 1642; *Lewin*, 285.

(*k*) *Cockburn v. Peel*, 3 D. F. &  
J. 170; *re Boyce*, 15 W. R. 827;

*Waite v. Littlewood*, 41 L. J. Ch.  
636.

(*l*) *Mortimer v. Picton*, 10 Jur.  
N. S. 83; *re Boyce*, 15 W. R. 827;  
but see *re Langford*, 2 J. & H. 458;  
*Bishop v. Bishop*, 9 W. R. 549.

(*m*) *Montefiore v. Guedalla*, W.  
N. (1868), 87; *re Price*, W. N.  
(1872), 159; *Peillon v. Brooking*,  
4 L. T. N. S. 731; *re Ingram*, 11  
W. R. 980.



bility of her having children (*n*), or where the primary object of the trust would otherwise be defeated (*o*), the investment will be allowed.

Where the petitioner was very poor, the usual provision against receiving three dividends in the year, by reason of the change, was omitted (*p*). Provision against receiving three dividends.

The costs of a petition for investment are generally payable out of income (*q*), but not if an application would in any case have been necessary (*r*). Costs.

Notwithstanding the order, the investment will not be effected until a written request to invest has been left with the Chancery Paymaster (*s*). Request for investment.

(*n*) *Vidler v. Parrott*, 12 W. R. 976; *Montefiore v. Guedalla*, W. N. (1868), 87.

(*o*) *Mortimer v. Picton*, 12 W. R. 292; *re Boyce*, 15 W. R. 827; and see *Hurd v. Hurd*, 11 W. R. 50.

(*p*) *Re Ingram*, 11 W. R. 980.

(*q*) *Equitable Soc. v. Fuller*, 1 J. & H. 379.

(*r*) *Re Langford*, 2 J. & H. 458.

(*s*) *Re Woodcock*, L. R. 13 Eq. 183.

## CHAPTER X.

### THE SETTLED ESTATES ACT, 1877.

**Applications under the Act.** APPLICATIONS under this Act must be by petition (*a*) ; even though made in a cause (*b*) ; and must be made to the Chancery Division (*c*).

**The object of the Act.** The Act enables the Court to direct leases and sales of settled estates whenever it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement (*d*). The Act will be construed liberally (*e*), and with a view to avoid delay and expense (*f*).

#### *Definitions—"Settlement"—"Settled Estates."*

**What is a "Settlement" ?** The word "settlement," as used in this Act, shall signify any Act of Parliament, deed, agreement, copy of court roll, will, or other instrument, or any number of such instruments, under or by virtue of which any hereditaments of any tenure, or any estates, or interests in any such hereditaments, stand limited to or in trust for

(*a*) 40 & 41 Vict. c. 18, s. 23. For a summary of the practice under the Act, see Middleton, 69.

(*b*) *Harvey v. Clark*, 25 Beav. 7 ; *Taylor v. Taylor*, 1 Ch. D. 431 ; and see *Pearoth v. Marriott*, W. N. (1866), 48.

(*c*) Sect. 3. The Court of Chancery of the County Palatine of Lancaster

(s. 44), and the Chancery Division in Ireland (s. 45, and 40 & 41 Vict. c. 57, s. 36), have also jurisdiction.

(*d*) Sects. 4, 16.

(*e*) *Re Shephard*, L. R. 8 Eq. 573 ; *re Clark*, L. R. 1 Ch. 294.

(*f*) *Beioley v. Carter*, L. R. 4 Ch. 240 ; *re Morgan*, L. R. 9 Eq. 587.

any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively (*g*).

The following have been held to be "limitations by way of succession," viz.: A trust out of income to pay an annuity to the testator's wife for life, and subject thereto, upon trust as to capital and income for his children equally (*h*); a devise of a house upon trust to permit the testator's wife to occupy it during widowhood, and after her second marriage upon trust for sale (*i*); a trust for the separate use of a married woman without power of anticipation, and subject thereto, upon trust for sale and investment, and upon trust as to the proceeds for her children (*j*); a gift to A. for life, with remainder (subject to a general power of appointment by A.) in trust for the person or persons whom she should leave her heir or co-heirs at law, and the heirs or assigns of such person or persons respectively (*k*); a trust for A. in case she should attain twenty-one, or marry before that age, with a gift over in strict settlement in case she should not attain a vested interest (*l*).

It has been held that a gift to such of a class of children as should attain twenty-one is not a "succession" within the meaning of the Act (*m*).

The term "settled estates," as used in this Act, shall signify all hereditaments of any tenure, and all estates or interests in any such hereditaments, which are the subject of a settlement; and for the purposes of this Act

What is a "settled estate"?

(*g*) Sect. 2.

(*k*) *Beioley v. Carter*, L. R. 4 Ch.

(*h*) *Collett v. Collett*, L. R. 2 Eq.

230.

203.

(*l*) *Re Horn*, 29 L. T. N. S.

(*i*) *Carlyon v. Truscott*, L. R. 20

830.

Eq. 348.

(*m*) *Re Burdin*, 5 Jur. N. S.

(*j*) *Re Morgan*, L. R. 9 Eq.

1378.

587.

a tenant in tail after possibility of issue extinct shall be deemed to be a tenant for life (*n*).

The term "settled estate" applies only to the estate or interest actually settled. Thus, if land be settled for a term of years upon certain trusts, the Court can only sell the term (*o*); but it seems that where an undivided share of an estate is subject to a settlement, the entirety will be considered a settled estate (*p*).

The term "settled estate" includes land of any tenure, as, for instance, copyholds (*q*); and any interest or estate in land, as, for instance, an equity of redemption (*r*); an interest arising by way of accruer (*s*); and lands equitably converted (*t*); but the term does not include chattels (*u*).

All estates or interests in remainder or reversion, not disposed of by the settlement, and reverting to a settlor, or descending to the heir of a testator, shall be deemed to be estates coming to such settlor or heir under or by virtue of the settlement (*v*).

In determining what are settled estates within the meaning of the Act, the Court will be governed by the state of facts, and by the trusts or limitations of the settlement, at the time of the settlement taking effect (*w*).

### *Leases.*

It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests

Court may  
authorize  
leases.

- |                                                          |                                                                                                                              |
|----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| ( <i>n</i> ) Sect. 2.                                    | see <i>re Burdin</i> , 5 Jur. N. S. 1378.                                                                                    |
| ( <i>o</i> ) <i>Grey v. Jenkins</i> , 26 Beav. 355.      | ( <i>t</i> ) <i>Re Greene</i> , 10 Jur. N. S. 1098; <i>re Laing</i> , L. R. 1 Eq. 417; <i>re Chamberlain</i> , 23 W. R. 852. |
| ( <i>p</i> ) <i>Re Shepheard</i> , L. R. 8 Eq. 571.      | ( <i>u</i> ) <i>D'Eyncourt v. Gregory</i> , 3 Ch. D. 636.                                                                    |
| ( <i>q</i> ) <i>Re Adair</i> , L. R. 16 Eq. 124.         | ( <i>v</i> ) Sect. 2.                                                                                                        |
| ( <i>r</i> ) <i>Eyre v. Saunders</i> , 5 Jur. N. S. 703. | ( <i>w</i> ) Sect. 2.                                                                                                        |
| ( <i>s</i> ) <i>Re Goodwin</i> , 3 Giff. 629; but        |                                                                                                                              |

of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, to authorize leases of any settled estates, or of any rights or privileges over or affecting any settled estates, for any purpose whatsoever, whether involving waste or not, provided the following conditions be observed :

*First.* Every such lease shall be made to take effect Term of years. in possession at or within one year next after the making thereof, and shall be for a term of years not exceeding, for an agricultural or occupation lease in England, twenty-one years, in Ireland, thirty-five years ; for a mining lease, or a lease of water-mills, way leaves, water leaves, or other rights or easements, forty years ; for a repairing lease, sixty years ; for a building lease, ninety-nine years. Provided always, that any such lease (except an agricultural lease) may be for such term of years as the Court shall direct, where the Court shall be satisfied that it is the usual custom of the district and beneficial to the inheritance to grant such a lease for a longer term than the term hereinbefore specified in that behalf (x).

This section is not a general power given to the Court which must necessarily be exercised at the instance of some one, but is a modified power subject to the restrictions and provisions of the Act (y).

The Court has no power to grant a lease in reversion (z).

The Court has authorized the granting of building leases of settled estates for 999 years, or at a fee farm rent, upon evidence that such leases were customary, and that the estate could not be beneficially disposed of for

(x) Sect. 4. As to evidence on applications for leases, see s. 11, *post*, p. 103. As to laying out streets, &c., see s. 20 ; *re Hargreave*, 15 W. R. 54 ; *post*, p. 109. (y) *Taylor v. Taylor*, 1 Ch. D. 426, 432. (z) *Re Henchy*, 3 Ir. Jur. N. S. 73 ; *cf. re Ford*, L. R. 8 Eq. 309.

such purposes on any other terms (a); and upon similar evidence of a custom, trustees of a 900 years' term were authorized to grant leases for terms not exceeding 600 years (b).

The Court refused to sanction a lease for seven years of a mansion house and the appurtenances, although the remaindermen consented, and though the tenant for life had not the means to keep it up (c).

Rent.

*Secondly.* On every such lease shall be reserved the best rent or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half yearly or oftener, without taking any fine or other benefit in the nature of a fine. Provided always, that in the case of a mining lease, a repairing lease, or a building lease, a peppercorn rent, or any smaller rent than the rent to be ultimately made payable, may, if the Court shall think fit so to direct, be made payable during all or any part of the first five years of the term of the lease (d).

What is "best rent" depends upon the facts and circumstances of each case (e). Where the transaction is fair, and no fine or other collateral consideration is taken by the person making the lease, and no injurious partiality is shown to a particular lessee, there ought to be something extravagantly wrong in the bargain in order to set it aside on this ground (f). The Court will see that the rent is such as, care and diligence being exerted, circumstances mark out as the rent likely to be obtained (g).

(a) *Re Carr*, 7 Jur. N. S. 1267 ;  
*re Elliott*, W. N. (1879), 135.

(b) *Re Cross's Charity*, 27 Beav.  
592.

(c) *Re Duchess of Cleveland*, 22  
W. R. 818.

(d) Sect. 4.

(e) *Re Rawlins*, L. R. 1 Eq. 287.

(f) *Doe v. Radcliffe*, 10 East,  
278.

(g) *Queensbury Case*; Sugden on  
Powers, 785.

## SETTLED ESTATES ACT.

*Thirdly.* Where the lease is of any earth, coal, stone, or mineral, a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter mentioned; namely, when and so long as the person for the time being entitled to the receipt of such rent is a person who by reason of his estate, or by virtue of any declaration in the settlement, is entitled to work such earth, coal, stone, or mineral, for his own benefit, one-fourth part of such rent, and otherwise, three-fourth parts thereof; and in every such lease, sufficient provision shall be made to ensure such application of the aforesaid portion of the rent, by the appointment of trustees or otherwise, as the Court shall deem expedient (*h*).

Part of rent of mining lease to be set aside.

An order authorizing a lease of mines may be extended so as to give the lessees the use of contiguous lands necessary for the convenient working of the minerals (*i*); and for a like purpose the Court has sanctioned a grant of way leaves over other part of the settled estate (*j*).

*Fourthly.* No such lease shall authorize the felling of any trees, except so far as shall be necessary for the purpose of clearing the ground for any buildings, excavations, or other works authorized by the lease (*k*).

Lease must not authorize felling of timber.

*Fifthly.* Every such lease shall be by deed, and the lessee shall execute a counterpart thereof, and every such lease shall contain a condition for re-entry on non-payment of the rent for a period of twenty-eight days after it becomes due, or for some less period to be specified in that behalf (*l*).

Form of lease.

When the Court authorizes a lease, the order shall

Covenants.

(*h*) Sect. 4.

(*k*) Sect. 4.

(*i*) *Re Reveley*, 11 W. R. 744.

(*l*) Sect. 4. As to evidence of execution of the counterpart, see

(*j*) *Re Lord Wallace*, W. N. (1869), 66.

s. 48.

direct that the lease shall contain such conditions as are required by the Act, and such other covenants, conditions, and stipulations, as the Court shall deem expedient with reference to the special circumstances; or may direct the same to contain such covenants, conditions, and stipulations, as may be approved by the judge at chambers, without directing the lease to be settled by the judge (*m*).

Thus, a special stipulation by the lessee to make roads has been inserted (*n*).

Lease of part  
of the estate.

The power to authorize leases conferred by the Act shall extend to authorize leases of the whole or any parts of the settled estates, and may be exercised from time to time (*o*).

Leases may be  
surrendered  
and renewed.

Any leases, whether granted in pursuance of this Act or otherwise, may be surrendered either for the purpose of obtaining a renewal of the same or not; and the power to authorize leases conferred by the Act shall extend to authorize new leases of the whole or any part of the hereditaments comprised in any surrendered lease (*p*).

The consideration for the surrender will be kept in view in settling the terms of the renewed lease (*q*).

Power to con-  
firm condition-  
al contract for  
lease.

The power to authorize leases conferred by the Act shall extend to authorize preliminary contracts to grant any such leases; and any of the terms of such contracts may be varied in the leases (*r*).

But the Court can only authorize such contracts as are in conformity with the provisions of the Act (*s*).

Leases of copy-  
hold or custom-  
ary heredita-  
ments.

All the powers to authorize leases contained in the

(*m*) Order, 25; and see s. 5.

(*n*) *Re Chambers*, 28 Beav. 653.

(*o*) Sect. 6.

(*p*) Sect. 7; *re Ford*, L. R. 8

Eq. 309.

(*q*) *Re Rawlins*, L. R. 1 Eq. 286.

(*r*) Sect. 8.

(*s*) *Cust v. Middleton*, 3 D. F. &

J. 33.



Act shall be deemed to include powers to authorize the lords of settled manors to give licences to their copyhold or customary tenants, to grant leases of lands held by them of such manors to the same extent, and for the same purposes, as leases may be authorized of freehold hereditaments under the Act (*t*).

But nothing in the Act shall authorize the granting of a lease of any copyhold or customary hereditaments not warranted by the custom of the manor, without the consent of the lord, nor otherwise prejudice or affect the rights of any lord of a manor (*u*).

The power to authorize leases may be exercised by the Court, either by approving of particular leases, or by ordering that powers of leasing, in conformity with the provisions of the Act, shall be vested in trustees in manner hereinafter mentioned (*v*).

A general power will not be given where the consent of all persons interested cannot be obtained, and some of the tenants in tail in remainder are not *in esse*; but a particular lease must be approved of by the Court (*w*).

When application is made to the Court, either to approve of a particular lease, or to vest any powers of leasing in trustees, the Court will require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature, value, and circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorized (*x*). It is also necessary to furnish the evidence required by orders 15, 16, and 17 (*y*).

When a particular lease, or contract for a lease, has

Execution of  
lease.

(*t*) Sect. 9.

(*u*) Sect. 56.

(*v*) Sect. 10; and see s. 13, *post*,  
p. 104.

(*w*) *Re Hutchinson*, 12 Jur. N. S.  
244.

(*x*) Sect. 11.

(*y*) *Post*, p. 115.

been approved by the Court, the Court *shall* direct what person or persons shall execute the same as lessor; and the lease or contract executed by such person or persons shall take effect in all respects as if he or they was or were at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement, and had immediately afterwards settled the same according to the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct (z).

The above section is imperative (a).

General powers  
of leasing may  
be given.

Where the Court shall deem it expedient that any general powers of leasing conformably to the Act should be vested in trustees, it may by order vest any such power accordingly, either in the existing trustees of the settlement or in any other persons; and such powers, when exercised by such trustees, shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise as the Court shall direct; and in every such case the Court, if it shall think fit, may impose any conditions, as to consents or otherwise, on the exercise of such power; and the Court may also authorize the insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid (b).

The Court cannot, however, vest general powers of leasing in trustees where the consent of some person is necessary, and has not been obtained (c); or where there are interested persons not *in esse* (d).

(z) Sect. 12.

(a) Compare s. 22; *post*, p. 110.

(b) Sect. 13.

(c) *Re Hurlé*, 2 H. & M. 196.

(d) *Re Hutchinson*, 12 Jur. N. S. 244.

General powers to grant mining leases have been vested under the Act (*e*).

The powers, when once vested, may be transferred on application by petition (*f*).

The order vesting such powers may provide for their exercise by persons other than the then trustees. Thus, where the lands were subject to two settlements, the Court vested powers of granting building, mining, and repairing leases in the trustees of the first settlement during the life of the tenant for life, and after his death in the trustees of the second settlement (*g*). In another case, powers of granting mining leases were vested in the trustees of a will, and in the survivors and survivor of them, and in the trustees or trustee for the time being, and such powers were directed to be exercised with the consent of the respective tenants for life (if any) for the time being in possession, who might have attained twenty-one, or if there should be no such tenant for life, then without such consent (*h*).

Notice of the powers so granted should be indorsed on the instrument creating the settlement (*i*).

The Act provides that, in orders vesting powers of leasing, no condition shall be inserted requiring the lease to be submitted to or be settled by the Court or a judge, or to be made conformable with a model lease deposited in the judge's chambers; unless the parties applying for the order desire to have such condition inserted, or it shall appear to the Court that there is some special reason

Lease need not  
be settled by  
judge.

(*e*) *Re Greene*, 10 Jur. N. S. 1098; and see *re Jones*, 5 Jur. N. S. 138: where the powers were very wide. \*

(*f*) *Re Kentish Town Estate*, 1 J. & H. 230.

(*g*) *Re Northey*, *cit.* Brickdale, 127.

(*h*) *Tolson v. Sheard*, 5 Ch. D. 20.

(*i*) See s. 33, *post*, p. 122.

rendering the insertion of such a condition necessary or expedient (*j*).

When the lease is to be settled by the judge, the practice is to carry into chambers an affidavit by the surveyors employed, stating accurately the particulars of the proposed lease with regard to its terms, covenants, conditions, and stipulations, and to apply, upon such affidavit, for a certificate approving the particulars (*k*).

But it is not necessary that a lease should be settled by the judge merely because it contains special covenants and conditions; and special covenants, conditions, and stipulations may be approved by the judge at chambers, without his settling the lease (*l*).

Striking out  
condition.

Where any such condition has been inserted in an order, it shall be lawful for any party interested to apply to the Court to strike out such condition, and the Court may alter the order accordingly; but it is not obligatory on the Court to act under this provision where there is a special reason for inserting the condition (*m*).

The application to strike out does not appear to come within section 23; and must therefore be made by motion (*n*). The costs of the application were, in the case of a mining lease, directed to be paid out of the portion of the rent set aside in trust for the inheritance (*o*).

### *Sales.*

Court may  
authorize  
sales.

It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests

(*j*) Sect. 14. See *re Dorning*, 14 W. R. 125; *re Jones*, 5 Jur. N. S. 138. For cases where a lease or model lease has been settled by the judge, see *re Chambers*, 28 Beav. 655; *re Hemingway*, 7 W. R. 279; *Att.-Gen. v. Christ Ch.*, 3 Giff. 521.

(*k*) *Morgan*, 219; *Daniell*, 1142.

(*l*) Order, 25.

(*m*) Sect. 15. See *re Russell*, 22 W. R. 399; *re Hoyle*, 10 Jur. N. S. 811; 12 W. R. 1125.

(*n*) Order, 28. See *Daniell*, 1888, n. (t).

(*o*) *Lowat v. D. of Leeds*, 11 L. T. N. S. 442.

of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to authorize a sale of the whole or any part of any settled estates, or of any timber (not being ornamental timber) growing on any settled estates; and every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being is or shall be required in the sale of lands sold under a decree of the Court (*p*).

The Court has jurisdiction to order a sale, though the settlement contain a power of sale (*q*); but it has no jurisdiction where there is an express declaration in the settlement that the powers of the Act shall not be exercised (*r*).

Whether the Court has jurisdiction to authorize sales generally seems doubtful. This was done in a recent case, where the trustees had a power of sale exerciseable after the death of the tenant for life, and all the beneficiaries were petitioners (*s*). But in a previous case it had been held that the Court could only sanction such sales as it was satisfied would be beneficial to the estate (*t*).  
General powers of sale.

Shares which have vested absolutely may be included with the other settled shares in an order for sale of the whole estate, provided the owners of the vested shares are co-petitioners (*u*).  
Shares, absolutely vested.

Where copyholds were by mistake contracted to be sold as freeholds; they were ordered to be enfranchised before the sale, and the costs of enfranchisement were directed to be paid out of the proceeds of sale (*x*).  
Copyholds sold as freeholds.

(*p*) Sect. 16. The section does not apply to exchanges, which may be effected under the Inclosure Acts, see Brickdale, 87.

(*q*) Sect. 38, *post*, p. 127; and see *re Thompson*, Johns. 418.

(*r*) Sect. 38, *post*, p. 126.

(*s*) *Re Andrews*, 26 W. R. 811.

(*t*) *Re Peacock*, 15 W. R. 100.

(*u*) *Re Goodwin*, 3 Giff. 620.

(*x*) *Re Adair*, L. R. 16 Eq. 124.

Sale, how made.

The sale is usually directed to be made by public auction (*y*); but the Court may authorize it to be made by private contract (*z*); and under special circumstances an order for sale out of Court has been made (*a*).

Settling conveyance in chambers.

Where all the persons interested are *sui juris*, the conveyance will only be directed to be settled in chambers, in case the parties differ; but where infants are or may be interested, the conveyance must be settled in chambers, whether the parties differ or not (*b*).

Reference.

Where all the persons interested are parties or concur, and the evidence is satisfactory, an immediate order will be made at the hearing without a reference to chambers.

Consideration of land sold for building.

When land is sold for building purposes, it shall be lawful for the Court, if it shall see fit, to allow the whole or any part of the consideration to be a rent issuing out of such land, which may be secured and settled in such manner as the Court shall approve (*c*).

Minerals may be excepted.

On any sale of land, any earth, coal, stone, or minerals may be excepted, and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants, or submit to any restrictions, which the Court may deem advisable (*d*).

The minerals may also be sold apart from the surface (*e*); and upon such sale, a time may be limited within which the minerals are to be worked out (*f*); and the conveyance may grant rights of using the surface for workings,

(*y*) As to sales under the Court, see Cons. Ord. XXXV. 13; and Daniell, 1148, *et seq.*

(*z*) *Re Adams*, 9 Ch. D. 116.

(*a*) *Re Adams*, 9 Ch. D. 116; but see *re Smith*, W. N. (1878), 196.

(*b*) *Re Eyre*, 4 K. & J. 268; but

see *re Sheffield*, W. N. (1876), 152; Seton, 1503.

(*c*) Sect. 18.

(*d*) Sect. 19; and see *Confirmation of Sales Act*, *post*, p. 140.

(*e*) *Re Gray*, W. N. (1875), 106; *re Milward*, L. R. 6 Eq. 248.

(*f*) *Re Mallin*, 3 Giff. 126.

and may reserve a rent in respect of the surface damaged from time to time (*g*).

It shall be lawful for the Court, if it shall deem it <sup>Laying out streets, &c.</sup> proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or water-courses, either to be dedicated to the public or not; and the Court may direct that the parts so laid out shall remain vested in the trustees of the settlement, or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the appointment of new trustees when required, as by the Court shall be deemed advisable (*h*).

This section does not say that the Court may direct roads and sewers to be made, but that the Court may direct any part of the estate "to be laid out" for roads and sewers. It merely provides that the building plans sanctioned by the Court may include the construction of roads and sewers (*i*). It does not authorize the making of roads generally or prospectively; but only applies to a case where, at the time of the application, the making of certain roads is shown to be beneficial to the estate (*k*).

The roads need not be public roads; nor, it seems, for the use of all the tenants of the estate (*l*).

Where any part of any settled estate is directed to be <sup>How expense</sup>

(*g*) *Re Millward*, L. R. 6 Eq. 248; and see *ante*, p. 101.

(*h*) Sect. 20.

(*i*) *Re Venour*, 2 Ch. D. 522, 525.

(*k*) *Re Hurle*, 2 H. & M. 196;

*re Chambers*, 28 Beav. 653; but see *re Hargreave*, 15 W. R. 54: where the plans were not required to be approved by the Court.

(*l*) *White v. Leeson*, 5 H. & N. 53, 60.

of making  
streets, &c., to  
be paid.

laid out for such purposes, the Court may direct that any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, including all necessary or proper fences, pavings, connections, and other works incidental thereto respectively, be made and executed; and that all or any part of the expenses in relation to such laying out and making and execution, be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estates, or be raised and paid out of the rents and profits of the settled estates or any part thereof, or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estate, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income; and the Court may also give such directions as it may deem advisable for the repair or maintenance of such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, or other works, out of any such rents, profits, income, or accumulations, during such period or periods of time, as to the Court shall seem advisable (*m*).

Execution of  
conveyance.

On every sale or dedication to be effected as hereinbefore mentioned, the Court *may* direct what person or persons shall execute the deed of conveyance; and the deed executed by such person or persons shall take effect as if the settlement had contained a power enabling such person or persons to effect such sale or dedication, and so as to operate (if necessary) by way of revocation and appointment of the use, or otherwise as the Court shall direct (*n*).

(*m*) Sect. 21.

(*n*) Sect. 22. See *re Hole*, W. N.

(1868), 70: where it was held that the Court had no power to direct



Where a trustee dies after the hearing, but before conveyance, a new trustee must be appointed (o).

*Proceedings for Protection.*

It shall be lawful for the Court, if it shall deem it <sup>Proceedings for protection.</sup> proper and consistent with a due regard for the interests of all parties who are or may hereafter be entitled under the settlement, and subject to the provisions and restrictions in the Act contained, to sanction any action, defence, petition to Parliament, parliamentary opposition, or other proceeding appearing to the Court necessary for the protection of any settled estate ; and to order that all or any part of the costs and expenses in relation thereto be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estate, or be raised and paid out of the rents and profits of the settled estate, or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estate, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income (p).

*Who may Petition.*

Any person entitled to the possession or to the receipt <sup>Person entitled to rents.</sup> of the rents and profits of any settled estates for a term of years determinable on his death, or for an estate for life or any greater estate, and also any person entitled to the possession or to the receipt of the rents and profits of any settled estates as the assignee of any person who, but <sup>Assignees.</sup> for such assignment, would be entitled to such estates

one of the persons in whom the legal estate was vested, to convey for them all.

(o) *Scott v. Hcisch*, 24 W. R.

108.

(p) Sect. 17. For form of order, see Seton, 1505. For form of petition, see Middleton, 114.

for a term of years determinable with any life, or for an estate for any life or any greater estate, may apply to the Court by petition in a summary way to exercise the powers conferred by the Act (*q*).

The petition must be presented by the person entitled to the possession or to the receipt of the rents and profits. If there is no such person in existence, no application can be made (*r*).

Equitable  
tenant for  
life.

It seems that an equitable tenant for life cannot petition, unless all the trustees join in the application (*s*). Where mines were vested in trustees for a term of twenty-one years, upon trust to work the mines and invest the profits, and hold them upon certain trusts, and subject to the term, to hold them upon trusts corresponding to limitations of certain freehold estates, under which A. was tenant for life, and A. presented a petition for sale, it was held that an order could not be made during the term unless the trustees joined as co-petitioners (*t*).

Estate subject  
to mortgage.

A person is deemed entitled to possession or receipt of the rents and profits, though his estate is charged or incumbered, either by himself, or by the settlor, or otherwise, to any extent; but the parties entitled to the charge will not be affected by the petition, unless they concur therein (*u*).

Estate during  
widowhood.

A widow, entitled during life or widowhood, and her children, entitled in remainder, may together present a petition (*x*).

(*q*) Sect. 23.

(*r*) *Taylor v. Taylor*, 1 Ch. D 431. As to the words "entitled to the possession or to the receipt of the rents and profits," see *Lord Scarisdale v. Curzon*, 1 J. & H. 66; *Wolley v. Jenkins*, 23 Beav. 60.

(*s*) *Taylor v. Taylor*, L. R. 20 Eq. 302; *re Smith*, W. N. (1878),

196; but see observations of James, L. J., in *Taylor v. Taylor*, 3 Ch. D. 145.

(*t*) *Exp. Puxley*, Ir. R. 2 Eq. 237.

(*u*) Sect. 54.

(*x*) *Williams v. Williams*, 9 W. R. 888.

Where a party to the application marries after the presentation of the petition, the trustees of the marriage settlement must be made parties by amendment (*y*). Marriage of party.

Questions of construction will not be decided upon petitions under the Act; but a petition may be presented by all the persons interested, though it is doubtful in what shares and proportions they are interested (*z*). Questions of construction.

A married woman may petition whether of full age or not (*a*); and though there is a clause against anticipation in the settlement (*b*); but she must be examined before the hearing (*c*), even though the property is settled to her separate use (*d*). The Court will under special circumstances dispense with examination (*e*). Married women.

An infant may petition by his next friend; but, after the petition has been answered, a guardian must be appointed, and the petition must be amended by substituting the guardian for the next friend (*f*). When the infant is tenant in tail, no application by the guardian can be made without the special direction of the Court (*g*). Infants.

A lunatic may petition by his committee, duly appointed (*h*); but the committee must apply in Lunacy for authority to act (*i*). Where the lunatic is tenant in tail, the committee must also obtain the special directions of the Chancery Division (*k*). Lunatics.

A person of unsound mind, not so found by inquisition, cannot consent to the petition; and the Court

(*y*) *Re Wilkinson*, 21 W. R. 537.

(*z*) *Re Williams*, 20 W. R. 967.

(*a*) Sect. 52. As to petitions by married women, see *ante*, p. 4.

(*b*) Sect. 50.

(*c*) Order, 13.

(*d*) Sect. 50.

(*e*) *Post*, p. 132.

(*f*) Sect. 49; Order, 5; *post*, p. 130.

(*g*) Sect. 49; Order, 6; *post*, p. 130.

(*h*) Sect. 49; *post*, p. 129.

(*i*) *Re Woodcock*, L. R. 3 Ch. 229.

(*k*) Sect. 49; Orders, 6, 11; *post*, p. 130.

has no power to appoint a guardian on behalf of such a person (*l*).

Bankrupts.

A petition may be presented by trustees or assignees of the property of bankrupts, debtors in liquidation, or insolvents (*m*).

*Form of Petition—Evidence—Hearing.*

Title and form  
of petition.

All petitions, notices, affidavits, and other proceedings under the Act, shall be entitled, "In the matter of the estates settled (by the settlor, or settlors, naming one of them, and referring to the instrument by which the settlement has been created, and mentioning the parish, or place, and county in which the lands, messuages, or tenements, proposed to be dealt with are situate), and in the matter of the Settled Estates Act, 1877;" and every such petition shall be marked with the words, "In the High Court of Justice, Chancery Division," and with the title of the judge before whom it is intended to be heard; and every petition shall, in the body thereof, or in a schedule thereto, or by a plan thereto annexed, contain a detailed description of the property proposed to be dealt with, sufficient to identify the same (*n*).

Every petition shall set forth the name, address, and description of the petitioner, and also a place within three miles from the site of Temple Bar, where he may be served with any order or notice relating to the subject of such petition (*o*).

Hearing.

Upon the presentation of the petition, a day shall be appointed for hearing, not less (unless the judge gives special leave) than eight clear days after such presentation;

(*l*) *Re Clough*, L. R. 15 Eq. 284; but see *re Crabtree*, L. R. 10 Ch. 201; and Order, 4, *post*.

(*m*) Sect. 49; *post*, p. 129.

(*n*) Order, 2. For form of petition, see *post*. See *re Whiteley*,

L. R. 8 Eq. 574, as to literal compliance with the order.

(*o*) Order, 31. In notices, advertisements, &c., the address of the petitioner's solicitor is sufficient.

and in the computation of such eight clear days, Sundays, and other days on which the offices are closed shall not be reckoned (*p*).

Where a petition has been put into the paper for hearing, and by reason of the parties not being ready, or for any other cause, the judge allows it to stand over generally, it may be put into the paper for a subsequent day, without any application to the Court or judge, on the petitioner or his solicitor applying for that purpose to the secretary of the Lord Chancellor, or Master of the Rolls (as the case may be); and notice of the appointment of such subsequent day shall be given by the petitioner, or his solicitor, two clear days before the day fixed, to the other parties entitled to appear on such petition (*q*).

Upon every petition the Court shall be satisfied by sufficient evidence that it is proper and consistent, with a due regard for the interests of all parties entitled under the settlement, that the powers should be exercised; and it must be stated why and upon what ground it is deemed to be so (*r*).

Where there are trustees seised or possessed of any estate in trust for any of the persons, whose consent or concurrence is required, evidence must be produced that notice of the application has been served on such trustees (*s*).

Evidence must be produced to satisfy the Court that neither the applicant, nor any party entitled, has previously applied to either House of Parliament for a private Act to effect the same, or a similar object; or if any such

(*p*) Order, 2.

(*q*) Order, 3. For form and contents of an order made under the Act, see Order, 24; *post*, p. 134.

(*r*) Order, 15; and see s. 11, *ante*, p. 103.

(*s*) Order, 16; see s. 30, *post*, p. 120.

application has been made, that the same was not rejected on its merits, or reported against by the judges to whom the bill may have been referred (*t*).

*Consents—Notices—Service.*

Parties and  
consents.

Subject to the exceptions hereinafter contained, every application to the Court must be made with the concurrence or consent of the following parties; namely (1.) Where there is a tenant in tail under the settlement in existence, and of full age, then the parties to concur or consent shall be such tenant in tail; or if there is more than one such tenant in tail, then the first of such tenants in tail, and all persons in existence having any beneficial estate or interest under the settlement prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail; and, (2.) In every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under the settlement, and also all trustees having any estate or interest on behalf of any unborn child (*u*).

Refusal to  
consent.

The Court cannot exercise the powers given by the Act, if any of the parties beneficially interested refuse to concur (*x*); unless their concurrence is dispensed with.

Unascertained  
persons.

It is no objection to a petition that the consent of unascertained persons, who may ultimately become entitled, has not been obtained (*y*). Thus, where the tenant for life and the trustees, who were the only persons in existence who had any interest in the property, con-

(*t*) Order, 17; see *re Wilson*,  
*post*, p. 128.

(*u*) Sect. 24.

(*x*) *Re Merry*, 15 W. R. 307.

(*y*) *Beioley v. Carter*, L. R. 4 Ch.  
230.

curred, it was held that the consent of the unascertained contingent remaindermen was unnecessary (z).

Trustees do not represent their beneficiaries; the consent of the *cestuis que trustent* must therefore be obtained, even where there are trustees for sale (a). The consent of the beneficiaries of a term for raising portions was held to be necessary (b); but where the remaindermen, who were *sui juris*, and the trustees concurred, the consent of children, who might take by substitution their parent's share, was dispensed with (c).

Notice of the application must be served on all trustees (d).

A married woman may consent to an application, though there is a clause against anticipation in the settlement; but she must be examined, though she is entitled to her separate use (e). Subject to examination, a married woman may consent, whether she is of full age, or an infant (f).

The consents of infants, lunatics, bankrupts, and insolvents, are regulated by Section 49 (g), and by Orders, 5—12 (h).

The Court may dispense with the consent of any persons interested: (1) where their interests are subsequent to the estate of an infant tenant in tail (i); or (2) where, having regard to the number of such persons, and to their estates and interests, the Court considers it proper to exercise

(z) *Beioley v. Carter*, L. R. 4 Ch. 230.

(a) *Re Ives*, 3 Ch. D. 690; *re Dendy*, 4 Ch. D. 879; but see *re Strutt*, L. R. 16 Eq. 629. It seems that R. S. C. Ord. XVI. r. 7 does not apply to this Act.

(b) *Re Boughton*, 12 W. R. 34.

(c) *Re Chamberlain*, 23 W. R.

852.

(d) Sect. 30; *post*, p. 120.

(e) Sect. 50, *post*, p. 131.

(f) Sect. 52, *post*, p. 132.

(g) *Post*, p. 129.

(h) *Post*, pp. 129-131.

(i) Sect. 25; *re Hooke*, W. N. (1875), 29.

Trustees.

Married women.

Dispensing with consent.

such discretion (*k*). The Court will, however, only dispense with consent in the last mentioned case where the number of such persons is comparatively small, and where their interests are comparatively unimportant as regards value. Where the persons interested are equal in number, or where the values of the interests approach closely, the opposition of persons so interested is fatal to the application (*l*). The consent of the following persons has been dispensed with; namely, of an infant born after the presentation of the petition, where the mother, and her other children, and the trustees, were petitioners (*m*); of a contingent remainderman entitled in the event of all the children of the testator dying under twenty-one without issue (*n*); of a married woman and her husband, entitled to a life interest in one-tenth (*o*); of a married woman, where the other seven persons interested consented, on the terms of the petition being served on her and her husband (*p*).

Notice.

Where the consent of any person has not been obtained, notice shall be given to him, requiring him, within a specified time, to notify whether he assents to, or dissents from the application, or submits his rights or interests to be dealt with by the Court. Every such notice must specify to whom and in what manner the notification is to be delivered; and in case no notification shall be delivered within the time specified, such person shall be deemed to have submitted his rights to be dealt with by the Court (*q*).

(*k*) Sect. 28. Service is, however, in any case necessary, *re Rylar*, 24 W. R. 949.

(*l*) *Taylor v. Taylor*, 1 Ch. D. 426, 433; S. C. 3 Ch. D. 146.

(*m*) *Re Lewis*, 24 W. R. 103.

(*n*) *Re Spurway*, 10 Ch. D. 230.

(*o*) *Re Cundee*, 37 L. T. N. S.

271; W. N. (1877) 184.

(*p*) *Re Thorp*, W. N. (1876) 251.

(*q*) Sect. 26. For form of notice, see *post*. As to notices and notifications by infants and lunatics, see s. 49, and Orders, 5, 6, 7, 11, 12; *post*, pp. 129-131.



The time to be specified in the notice within which the notification shall be delivered shall, in case the person to be served is a guardian of an infant, be such as shall be directed by the judge in the order appointing the guardian; in the case of a married woman or committee of a lunatic, not less than twenty-eight clear days after service; and in other cases, not less than fourteen clear days after service. But in case the person to be served is of unsound mind not so found by inquisition, or is out of the jurisdiction of the Court, or it is desired to serve such notice in any other manner than above provided, an application shall be made at chambers *ex parte* by the petitioner for the directions as to the manner in which such notice shall be given, and as to the time to be specified in such notice within which the notification is to be made by the person served (*r*). Time for notification.  
Directions for service.

Upon application for directions as to service of such notice, the Court has, in the case of a person of unsound mind not so found, ordered service personally on such person, and also on the person in whose charge he was (*s*).

In the case of a person out of the jurisdiction, service of the notice by post was ordered (*t*).

Any person served with such notice shall be at liberty, upon reasonable notice to the petitioner's solicitor, to inspect and peruse the petition without payment of any fee, and shall be entitled to be furnished with a copy thereof (*u*). Perusal of petition.

Where a person cannot be found, or it is uncertain whether he is living or dead, or where it shall appear to the Court that such notice cannot be given without ex- Dispensing with notice.

(*r*) Order, 4.

(*s*) *Re Crabtree*, L. R. 10 Ch. 203; and see *re Stark*, W. N. (1875) 224.

(*t*) *Re Rylar*, 24 W. R. 949; and see *re Mewburn*, 22 W. R. 752,

where leave to serve a respondent out of the jurisdiction was refused.

(*u*) Order, 22. As to copies, see Add. Rules, August, 1875, Ord. V. rr. 8, 9, 12, & 13.

pense disproportionate to the value of the subject matter of the application, the Court, if it shall think fit, either on the ground of the rights or interests of such person being small or remote, or being similar to the rights or interests of any other person or persons, or on any other ground, may by order dispense with notice to such person; and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court (x).

Order made  
subject to  
right.

The Court may, if it thinks fit, give effect to any petition, subject to, and so as not to affect the rights, estate, or interest of any person whose concurrence or consent has been refused, or who has not submitted, or is not deemed to have submitted his rights and interests to be dealt with by the Court, or whose rights, estate, or interest ought, in the opinion of the Court, to be excepted (y).

The Court has made such an order subject to the rights of legatees whose legacies were charged upon the estate, where such persons were very numerous (z).

Notice to  
trustees.

Notice of any application under the Act must be served on all trustees who are seised or possessed of any estate in trust for any person whose consent is necessary, and on any other parties who in the opinion of the Court ought to be served, unless the Court shall think fit to dispense with such notice (a).

Evidence of service on trustees must be produced at the hearing (b). Trustees so served have a right to inspect the petition without payment, and to have a copy at the usual charge (c).

Advertisements.

Notice of any application to the Court under the Act

(x) Sect. 27. For a case where notice was dispensed with on the ground of remoteness of interest, see *re Earl of Kilmorey*, 26 W. R. 54.

(y) Sect. 29.

(z) *Re Legge*, 6 W. R. 20; *re Parry*, 34 Beav. 462.

(a) Sect. 30. As to dispensing with notice, see *ante*, p. 119.

(b) Order, 16.

(c) Order, 22.

shall, if the Court shall so direct, but not otherwise, be inserted in such newspapers as the Court shall direct; and any person or body corporate, whether interested in the estate or not, may apply to the Court by motion to be heard in opposition to or in support of the application; and the Court may permit such person or corporation to appear and be heard, on such terms as to costs, or otherwise, and in such manner, as it shall think fit (*d*).

Advertisements therefore are now unnecessary, unless directed at the hearing.\* If directed, the petition will stand over, either generally, or for such time, as the Court shall direct (*e*).

Where all the persons interested are before the Court, and the public have no concern in the matter, it seems the Court will not require advertisements to be issued (*f*).

The title of the advertisement must be the same as the title of the petition (*g*); but slight inaccuracies or divergencies, which are not likely to mislead, are immaterial, and will not necessitate re-advertisement (*h*). Where, owing to intervening circumstances, it becomes necessary to amend the petition, the Court will direct fresh advertisements, if the amendment involve new facts and new parties so as to give the petition a new character, but not if the case introduced by amendment does not substantially differ from the case of the original petition (*i*).

(*d*) Sect. 31. For form of advertisement, see *post*.

(*e*) Order, 18.

(*f*) *Re Chilcott*, W. N. (1877) 259.

(*g*) Order, 2; *ante*, p. 114.

(*h*) *Re Nune*, W. N. (1867) 109; *re Hemsley*, L. R. 16 Eq. 315; *re Bicknell*, L. R. 14 Eq. 467; *re Warne*, W. N. (1875) 109; *re Whitely*, L. R. 8 Eq. 574; but see

*re Bateman*, 13 W. R. 513.

(*i*) *Re Banbury*, 13 W. R. 370.

For cases where readvertisement was not required, see *re Kentish Town Estates*, 1 J. & H. 230; *re Horton*, 34 Beav. 386; *re Corbet*, W. N. (1866) 318; *Wheeler v. Tootel*, 16 W. R. 273; *re Marshall*, L. R. 15 Eq. 66; *re Wilkinson*, 21 W. R. 537; *re Earl of Kilmorey*, 26 W. R. 54.

Under the old practice with regard to advertisements it was usual to insert a notice once in the "London Gazette," and once in each three successive weeks, in some local paper. The notice was not settled in chambers, nor was the copy for the "Gazette" signed by the chief clerk, but the directions were written on the summons, and signed by the petitioner's solicitor (*k*).

Leave to  
appear.

The motion for leave to be heard must be made within the time specified in the advertisement, and may be made either *ex parte*, or on notice to the petitioner; but if made *ex parte*, the order must be served on the petitioner's solicitor (*l*), and will be made subject to such order as to costs as the Court shall think fit (*m*).

Where a person obtains leave to be heard, he may upon reasonable notice, inspect and peruse the petition, at the office of the petitioner's solicitor, upon payment of 13s. 4d., and shall be entitled to a copy of the petition upon payment of the usual charge (*n*).

Notice to be  
endorsed on  
settlement.

The Court shall direct that some sufficient notice of the exercise of any of the powers of the Act shall be placed on the settlement, or on any copies thereof, or otherwise recorded in any way it may think proper, in all cases where it shall appear practicable and expedient for preventing fraud or mistake (*o*).

Notice of a power to grant building leases has been ordered to be indorsed on a deed declaring the trusts of a dissenting chapel (*p*); and where the probate of the will creating the settlement was lost, notice was directed to be indorsed on a deed appointing new trustees (*q*). Where

(*k*) Middleton, 79. As to successive weeks, see *Brown v. Pennefather*, 4 N. R. 221.

(*l*) Order, 21.

(*m*) Order, 19.

(*n*) Order, 20.

(*o*) Sect. 33. See *re Chambers*, 28 Beav. 655; *re Boyd*, Ir. R. 8 Eq. 76.

(*p*) *Re Cross*, 27 Beav. 592.

(*q*) *Re Burley*, W. N. (1868) 148.

the settled estate is in a register county, notice may be given by directing a memorial of the order to be registered (*r*).

Where the Court shall not think it practicable or expedient to record such notice, the order shall state that no record of the order need be made (*s*).

### *Application of Moneys.*

All money to be received on any sale under the Act, or to be set aside out of rent or payments reserved on any lease of earth, coal, stone, or minerals, may, if the Court shall think fit, be paid to any trustees of whom it may approve, or otherwise the same, so far as relates to estates in England, shall be paid into Court *ex parte* the applicant in the matter of this Act, and so far as relates to estates in Ireland, shall be paid into the Bank of Ireland, to the account of the Accountant-General *ex parte* the applicant in the matter of the Act; and such money shall be applied as the Court shall from time to time direct to some one or more of the following purposes; namely—(1.) So far as relates to estates in England, the purchase or redemption of land-tax, and so far as relates to estates in Ireland, the purchase or redemption of rent-charge in lieu of tithes, crown-rent, or quit-rent; (2.) The discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the same uses or trusts; (3.) The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or (4.) The payment to any person becoming absolutely entitled (*t*).

The money may be ordered to be paid to the trustees, Payment to trustees.

(*r*) Order, 23.

(*s*) Order, 23.

(*t*) Sect. 34. Compare *Lands Clauses Act*, s. 69.

to be held upon the trusts of the settlement (*u*); but this will not be done if the parties, or some of them, are under disability or resident abroad (*x*).

**Service.** A petition merely dealing with purchase-money is not within the 24th section, and need not therefore be served upon all the persons interested, as upon a sale (*y*). But service has been ordered on all the persons interested down to the first tenant in tail (*z*).

The above 34th section is similar to the 69th section of the Lands Clauses Act (*a*); and the decisions under the latter section are by analogy applicable to the former (*b*).

**Incumbrance.** Assessments made by a corporation for paving a street are an incumbrance within the section (*c*).

**Repairs and improvements.** The money may be applied in the erection of new buildings on other parts of the settled estate, but not in repairs and improvements which do not put new buildings on the ground (*d*). It seems, however, that the Court may now direct such moneys to be applied in making "streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, including all necessary or proper fences, pavings, connections, and other works incidental thereto" (*e*).

**Persons absolutely entitled.** The money will be ordered to be paid out to any person absolutely entitled (*f*); but before payment out to a

(*u*) *Re Morgan*, L. R. 9 Eq. 587; *re Hemsley*, 43 L. J. Ch. 72; *re Shaw*, L. R. 14 Eq. 9; *re Newman*, L. R. 9 Ch. 681.

(*x*) *Aston v. Meredith*, L. R. 13 Eq. 492.

(*y*) *Re Duke of Cleveland*, 1 Dr. & S. 481; *re Sexton Barns*, 10 W. R. 416; *ante*, p. 116.

(*z*) *Re Bolton Estates*, 19 W. R. 429.

(*a*) *Ante*, p. 63.

(*b*) For cases under the Lands

Clauses Act, see *ante*, p. 63.

(*c*) *Re Hilliard*, 38 L. T. N. S. 93; and see as to redemption of land tax, and discharge of incumbrances, *ante*, p. 63.

(*d*) *Re Newman*, L. R. 9 Ch. 681; *Drake v. Trefusis*, L. R. 10 Ch. 367; *re Speer*, 3 Ch. D. 262; but see *re Clitheroe*, 17 W. R. 345.

(*e*) Sect. 21; *ante*, p. 109.

(*f*) As to persons absolutely entitled, see *ante*, p. 67.

tenant in tail, he must execute a disentailing deed (*g*) ; and must make an affidavit of no incumbrances (*h*). Payment to husband and wife has been ordered on proof that she was past child-bearing (*i*), and on her executing a deed acknowledged (*k*). On payment out to a married woman, an affidavit of no settlement is necessary (*l*).

The money arising from a sale under the Act is treated as realty, there being an equity for reconversion in favour of the heir (*m*). Conversion.

The application of the money in manner aforesaid may, if the Court shall so direct, be made by the trustees (if any) without any application to the Court, or otherwise upon an order of the Court, upon the petition of the person who would be entitled to the possession of the receipt of the rents and profits of the land if the money had been invested in the purchase of land (*n*). Application of money by trustees without application to the Court.

The order may direct the trustees to apply the proceeds without any further application to the Court (*o*) ; or may direct the money to be paid to the trustees, to hold upon the trusts of the settlement (*p*), or upon their undertaking to apply it as directed (*q*).

Until the money can be applied as aforesaid, the same shall be invested as the Court shall direct in some or one of the investments in which cash under the control of the Court is for the time being authorized to be invested ; and Interim investment.

(*g*) *Re Reynolds*, 3 Ch. D. 61 ; and see *ante*, p. 69.

(*h*) *Thornhill v. Milbank*, 12 W. R. 523.

(*i*) As to payment to women past child-bearing, see *ante*, p. 23.

(*k*) *Re Belt*, 25 W. R. 901 ; but see *Standerling v. Hall*, 11 Ch. D. 652, as to the necessity of a deed acknowledged ; and see *ante*, p. 23.

(*l*) Seton, 1484. *Secus*, if the application is for a sale or lease, *re*

*Standish*, 25 W. R. 8.

(*m*) *Foster v. Foster*, 1 Ch. D. 588 ; *Mildmay v. Quicke*, 6 Ch. D. 553 ; and see *Kelland v. Fulford*, 6 Ch. D. 491.

(*n*) Sect. 35.

(*o*) *Re Peacock*, 12 Jur. N. S. 959 ; *re Boyd*, Ir. R. 8 Eq. 76.

(*p*) *Re Morgan*, L. R. 9 Eq. 587 ; *re Sharo*, L. R. 14 Eq. 9 ; *re Hemsley*, 43 L. J. Ch. 72.

(*q*) *Re Newman*, L. R. 9 Ch. 681.

the interest and dividends of such investments shall be paid to the person who would have been entitled to the rents and profits of the lands if the money had been invested in the purchase of land (r).

The order directing investment, and also a written request to invest must be left at the Chancery Paymaster's office (s).

Application of  
moneys arising  
from leases or  
reversions.

Where any purchase-money shall have been paid into Court in respect of any lease for a life or lives, or years, or for a life or lives and years, or any estate in lands less than the whole fee simple, or in respect of any reversion dependent on any such lease or estate, it shall be lawful for the Court, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid, in such manner as the Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion, in respect of which such money shall have been paid, or as near thereto as may be (t).

This section follows, with merely verbal alterations, the 74th section of the Lands Clauses Act (u).

### *Powers of the Act.*

When, and  
when not,  
exercisable.

The Court shall be at liberty to exercise any of the powers conferred by the Act, whether the Court shall have already exercised any of such powers in respect of the same property, or not; but no such powers shall be exercised if an express declaration that they shall not be exercised is contained in the settlement; Provided always

(r) Sect. 36. As to investment of cash under the control of the Court, see *ante*, p. 93.

(s) *Re Woodcock*, L. R. 13 Eq.

183; and see Ch. Funds Rules, 1874, r. 65.

(t) Sect. 37.

(u) See *ante*, p. 72.



that the circumstance of the settlement containing powers to effect similar purposes shall not preclude the Court from exercising any of the powers conferred by the Act, if it shall think that the powers contained in the settlement ought to be extended (x).

It seems that the power of the Court to direct a sale where there is a power in the settlement is not confined to cases where the power in the settlement ought to be extended, but may be exercised when the powers in the settlement are sufficient for the purpose without any extension (y). Thus, the Court has directed a sale, where the trustees had a general power of sale (z). A direction in the settlement that the power shall not be exercised before a given event does not amount to an "express declaration" that the powers of the Act shall not be exercised before that event (a); and, therefore, where the power in a settlement is to be exercised on a future event, it may be accelerated, so as to be immediately exercisable (b).

Nothing in this Act shall be construed to empower the Court to authorize any lease, sale, or other act, beyond the extent to which, in the opinion of the Court, the same might have been authorized by the settlor or settlors (c).

The Court shall not be at liberty to grant any application under the Act in any case where the applicant or any party entitled has previously applied to either House of Parliament for a private Act to effect the same or a similar object, and such application has been rejected on

Extending the power of the settlement.

Application to Parliament.

(x) Sect. 38. The Court will not extend a power by dispensing with a necessary consent, see *re Hurle*, 12 H. & M. 196.

(y) *Re Thompson*, Johns. 418, 423.

(z) *Grey v. Jenkins*, 26 Beav. 351.

(a) *Re Williams*, W. N. (1878) 189.

(b) *Re Morgan*, L. R. 9 Eq. 587; *re Hemsley*, 43 L. J. Ch. 72.

(c) Sect. 39. Entails created by Act of Parliament are not within the Act, see s. 55; *post*, p. 134.

its merits, or reported against by the judges to whom the bill may have been referred (*d*).

Evidence that no application has been made to Parliament must be produced at the hearing (*e*).

A bill which has been rejected will be presumed to have been rejected on its merits unless the contrary is shown (*f*).

Proceedings  
not invali-  
dated by ir-  
regularity.

After the completion of any lease or sale, or other act, under the authority of the Court, and purporting to be in pursuance of this Act, the same shall not be invalidated on the ground that the Court was not empowered to authorize the same; except that no such lease, sale, or other act shall have any effect against a person whose concurrence or consent ought to be obtained, or who ought to be served with notice, or in respect of whom an order dispensing with such service ought to be obtained, in the case where such concurrence or consent has not been obtained, and such service has not been made, or dispensed with (*g*).

The effect of this section is that mere irregularity will not invalidate the order, if all the parties interested are before the Court (*h*).

### *Costs.*

Costs.

The Court may order that all or any costs or expenses of all or any parties of and incident to any application under the Act shall be a charge on the hereditaments which are the subject of the application, or on any other hereditaments included in the same settlement and sub-

(*d*) Sect. 32.

(*e*) Order, 17. ]

(*f*) *Re Wilson*, 1 L. T. N. S.  
25.

(*g*) Sect. 40.

(*h*) *Lloyd v. Jones*, 9 Ves. 37 ;

*re Shephard*, L. R. 8 Eq. 573 ;  
and see *re Thompson*, Johns. 418 ;  
*Beioley v. Carter*, L. R. 4 Ch. 238 ;  
*Curtis v. Price*, 12 Ves. 89 ; *Bowen*  
*v. Evans*, 1 J. & L. 178, 258.

ject to the same limitations; and the Court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of such hereditaments, or out of the rents or profits thereof; such costs and expenses to be taxed as the Court shall direct (*i*).

Trustees will be allowed their costs of appearing on the petition (*k*), though the petition is dismissed; and such costs may be ordered to be a charge on the estate (*l*). Where the costs are ordered to be raised by mortgage, the name of the person advancing the money may be inserted in the order, so as to save the expense of a mortgage deed (*m*).

The costs of a petition, which is for the benefit of all parties, are paid out of corpus (*n*); but where the application is solely for the benefit of the tenant for life, the costs will be paid out of income (*o*).

The costs of proceedings for protection (*p*), and of perusing the petition (*q*), are specially provided for by the Act.

The fees and allowances to solicitors and officers of the Court are regulated by Orders, 29 and 30, which incorporate Add. Rules, Aug., 1875, Ord. VI., and Rules of 28th Oct., 1875.

### *Persons under disability.*

All powers given by this Act, and all applications to the Court under this Act, and consents to and notifications respecting such applications, may be executed, made, or given by, and all notices under the Act may be given to,

(*i*) Sect. 41. For form of order, see Seton, 1488.

(*k*) *Re Duke of Cleveland*, 2 L. T. N. S. 78.

(*l*) *Re Hurle*, 2 H. & M. 204.

(*m*) *Re Tunstall*, 14 L. T. N. S. 352.

(*n*) *Wheeler v. Tootal*, 16 W. R.

273; *re Parby*, 29 L. T. 72.

(*o*) *Re Marner*, L. R. 3 Eq. 432; *cf. re Parby, supra*.

(*p*) Sect. 17, *ante*, p. 111.

(*q*) Orders, 20, 22, *ante*, pp. 119, 122. As to fees for copies, see Add. Rules, Aug. 1875, Ord. V. 8, 9, 12, & 13.

Infants, lunatics, and bankrupts.

guardians on behalf of infants, and by or to committees on behalf of lunatics, and by or to trustees or assignees of the property of bankrupts, debtors in liquidation, or insolvents ; Provided nevertheless, that, in the case of infant or lunatic tenants in tail, no application to the Court or consent to or notification respecting any application may be made or given by any guardian or committee without the special direction of the Court (*r*).

Guardians.

Where it is desired that the guardian of an infant shall make or consent to any application, or make any notification respecting the application, or that notice may be given to any such guardian on behalf of an infant, the Court may appoint a guardian to such infant for the purposes of the Act ; and an application for such appointment may, after the petition is presented, be made at Chambers by the petitioner by summons (*s*). The summons must be served upon the parent, testamentary guardian, or guardian appointed by the Court, of the infant, if there be any such parent or guardian, unless the Court or judge shall dispense therewith (*t*).

Infant and  
lunatic tenants  
in tail.

In the case of a lunatic or infant tenant in tail by his committee or guardian applying or consenting to an application, or giving a notification respecting an application, an application may be made at chambers by the petitioner, after the petition is presented, that such committee or guardian may be directed to so apply or consent, or give a notification ; and, in the case of an infant, such application may be combined with the application to appoint a guardian (*u*).

In cases where the committees or guardians of lunatic

(*r*) Sect. 49.

(*s*) Order, 5. For form of summons, see *post*.

(*t*) Order, 8. As to what evi-

dence is required on the appointment of guardians, see Order, 10.

(*u*) Order, 6 ; and see *ante*, p. 113.

or infant tenants in tail shall be served with notice in pursuance of the 26th section, an application may be made at Chambers by the petitioner, before the expiration of the time specified in such notice, that such committee or guardians may notify that they either assent to or dissent from such application, or submit their rights or interests so far as they may be affected by such application to be dealt with by the Court (x).

The summons under either of the two last mentioned orders (6 and 7) must be served on the committee of the lunatic, or the guardian appointed or proposed to be appointed of such infant (y).

The evidence on such summons is, in the case of a lunatic tenant in tail, the production of the authority of the judges in lunacy to the committee to act, and if it shall appear thereby that such judges think the committee ought to apply or consent or give such notification, such authority shall be sufficient evidence, unless the Court or judge for any special reason require further evidence (z). In the case of an infant tenant in tail, evidence is to be produced to satisfy the judge that it is, and the guardian is to make an affidavit that he believes that it is, proper and consistent with a due regard for the interest of such infant that such direction should be given (a).

Where a married woman shall apply to the Court, or consent to an application to the Court under this Act, Examination of married women. she shall first be examined, apart from her husband, touching her knowledge of the nature and effect of the application, and it shall be ascertained that she freely desires to make or consent to such application; and such examination shall be made, whether the hereditaments

(x) Order, 7.

(z) Order, 11.

(y) Order, 9. For forms of summons, see *post*.

(a) Order, 12.

which are the subject of the application shall be settled in trust for the separate use of such married woman, or not; and no clause or provision in any settlement restraining anticipation shall prevent the Court from exercising, if it shall think fit, any of the powers given by the Act; and no such exercise shall occasion any forfeiture, anything in the settlement contained to the contrary notwithstanding (*b*).

**When taken.** The examination may be taken at any time after the petition is presented and answered (*c*).

Subject to such examination, married women may make or consent to any application, whether they are of full age or infants (*d*).

Examination is necessary, though the interest is only a jointure in the property (*e*).

The examination was allowed to be taken after the order was drawn up, where it had been accidentally omitted to be taken before; the order being post-dated, and the petition being ordered to be mentioned again (*f*).

**When dispensed with.** Examination has been dispensed with where the wife's interest was remote and sufficiently represented by the trustees of her marriage settlement (*g*); and where she was only contingently entitled to rent charges out of the estate (*h*); and where she was resident abroad (*i*); and where she had married since the presentation of the petition (*k*).

**By whom taken.** The examination of a married woman, when resident within the jurisdiction of the Court to which the application is made, shall be made either by the Court or by

- |                                                               |                                                                                                                        |
|---------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| ( <i>b</i> ) Sect. 50.                                        | 936.                                                                                                                   |
| ( <i>c</i> ) Order, 13.                                       | ( <i>h</i> ) <i>Re Earl of Kilmorey</i> , 26 W. R. 54.                                                                 |
| ( <i>d</i> ) Sect. 52; <i>re Broadwood</i> , L. R. 7 Ch. 323. | ( <i>i</i> ) <i>Re Tibbett</i> , 17 W. R. 394; <i>re Thorne</i> , 20 W. R. 587; <i>re Halliday</i> , L. R. 12 Eq. 199. |
| ( <i>e</i> ) <i>Re Turbut</i> , 2 N. R. 487.                  | ( <i>k</i> ) <i>Re Marshall</i> , L. R. 15 Eq. 66.                                                                     |
| ( <i>f</i> ) <i>Re Turbutt</i> , 8 L. T. N. S. 657.           |                                                                                                                        |
| ( <i>g</i> ) <i>Re Lord de Tabley</i> , 11 W. R.              |                                                                                                                        |

some solicitor appointed by the Court for that purpose. If resident out of the jurisdiction, her examination may be made by any person appointed for that purpose by the Court, whether he is or is not a solicitor of the Court, and the appointment of any such person not being a solicitor, shall afford conclusive evidence that the married woman was at the time of such examination resident out of the jurisdiction (l).

When it is desired that a married woman resident within the jurisdiction shall be examined otherwise than by the Court, a solicitor, who is a perpetual commissioner to take acknowledgments of deeds by married women, may be appointed for that purpose by the Judge at Chambers, without summons or order, upon the request of the petitioner and a certificate of the solicitor for the petitioner (m), that the person to be appointed is not a solicitor for the petitioner, or for any party whose consent to the application is required; but where an examination by such solicitor will cause unreasonable expense, delay, or inconvenience, or where the married woman is resident out of the jurisdiction, an application by summons may be made *ex parte* by the petitioner at Chambers to appoint a solicitor, if such woman is resident within the jurisdiction, and if not so resident, a person, whether a solicitor or not, to take such examination (n).

One examiner may take the examination of several or of all the married women interested (o).

The solicitor appointed should be an independent solicitor, and not the solicitor to the husband or any

(l) Sect. 51.

(m) For forms of request and certificate, see App. to Orders, No. 7; and *post*.

(n) Order, 14. For form of sum-

mons, see App. to Orders, No. 8; and *post*.

(o) App. to Orders, Nos. 7, 8, 10; and *post*.

party interested (*p*); but it seems that the husband's solicitor may attest the signatures of the commissioner and married women (*q*).

*Miscellaneous Provisions.*

No obligation to make or consent to application.

Nothing in this Act shall be construed to create any obligation on any person to make or consent to any application to the Court or to exercise any power (*r*).

Exception of entails created by Act of Parliament.

Nothing in this Act shall authorise any sale or lease beyond the term of twenty-one years of any settled estates, in respect of which, under any Act of Parliament, the tenants in tail are restrained from barring or defeating their estates tail, or where the reversion is vested in the Crown (*s*).

Form of order.

Every order shall state, in addition to the names of the petitioners, the names of the persons who concur or consent, or to whom notice of the application has been given, or who may have obtained leave to be heard in opposition to or in support of the application, and whether any notification was received from the persons to whom notice has been given, and if any has been received, the purport thereof, and also the names of the persons if any, notice to whom has been dispensed with, and whether the order is made subject to any and what rights, estate, or interest of any person whose consent has been refused, or who shall not, or shall not be deemed to, have submitted his rights or interests to be dealt with by the Court, or whose rights or interests ought, in the opinion of the Court, to be excepted (*t*).

(*p*) *Re Manson*, 24 Beav. 220 ;  
*re Brealey*, 5 W. R. 613 ; *re Noyes*,  
6 W. R. 7.

(*q*) *Re Lewis*, 24 W. R. 103 ; but  
see *re Bendyshe*, 3 Jur. N. S. 727 ;  
5 W. R. 816.

(*r*) Sect. 53 ; *re Hurle*, 2 H. & M.  
196.

(*s*) Sect. 55.

(*t*) Order, 24, and see Order, 23 ;  
Seton, 1474, *et seq.*



The rules, 1, 2, 3, and 6 of Order LVII. (as to time) in Time. the schedule to the Supreme Court of Judicature Act, 1875, shall be applicable to all proceedings under the Act (*u*).

The forms in the Appendix to the Orders *shall* be adhered to, subject only to such variations as may be necessary to meet the circumstances of the case or direction of the Court (*x*). Forms shall be adhered to.

In all cases not provided for by the Act or the Orders, the existing forms and mode of procedure, and general practice of the Court on similar proceedings, shall apply to proceedings under the Act (*y*). Existing procedure to be followed when no provision in the Act.

The Judge in person sitting in Court or in Chambers, in the case of any petition, may, by special order, dispense with all or any of the Orders so far as they are applicable to such petition in any case in which he shall think fit, and upon such terms and conditions (if any) as he may deem proper (*z*). Court may dispense with Orders.

(*u*) Order, 26.

(*x*) Order, 27.

(*y*) Order, 28.

(*z*) Order, 32.

## CHAPTER XI.

### PROPERTY LAW AMENDMENT ACT.

Court may  
authorise  
surrender.

WHERE an infant or married woman is or shall become entitled to any lease for a life or lives, or for any term of years, either absolute or determinable upon death, or otherwise, it shall be lawful for such infant, or for his or her guardian, or other person on his behalf, and for such married woman, or any person on her behalf, to apply by petition or motion, or (if the infant is a ward of Court, or the administration of his estate, or his maintenance, is under the direction of the Court) by summons; and the Court may thereupon authorise the surrender of such lease, and the taking of a new lease (a).

Court may  
authorise  
renewal.

Where an infant or married woman might, if not under disability, be compelled to renew any lease, it shall be lawful for such infant, or his guardian in the name of such infant, or such married woman, by the direction of the Chancery Division, to be signified by an order to be made on petition of such infant or guardian, or of such married woman, or of any person entitled to such renewal, or upon summons, if such infant is a ward of Court, or the administration of his estate, or his maintenance, is under the direction of the Court, from time to time to

(a) 11 Geo. IV. & 1 Will. IV. c. (5); Seton, 744; Daniell, 1917; 65, s. 12; Cons. Ord. XXXV., 1 Simpson, 334.

accept a surrender of such lease, and to make a new lease, as the Court shall direct (*b*).

Where an infant is, or shall be seised or possessed of, or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the Court to be for the benefit of such infant that a lease or under-lease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or the working of mines, or otherwise improving the same, or for farming, or other purposes, it shall be lawful for such infant, or his guardian in the name of such infant, by the direction of the Chancery Division, to be signified by an order to be made upon the petition of such infant, or his guardian, or upon application by summons, if such infant is a ward of Court, or the administration of his estate, or his maintenance is under the direction of the Court, to make such lease of the lands of such persons respectively, or any part thereof, according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants as the Court shall direct; but in no case shall any fine or premium be taken, and in every case the best rent shall be reserved; and the lease shall be settled by the Judge; and a counterpart shall be executed by the lessee, and shall be deposited in the Central Office, until the infant shall attain twenty-one. Provided, that no lease shall be made of the mansion-house and grounds for any period exceeding the minority of such infant (*c*).

The Court is only empowered to direct a lease of land,

(*b*) 11 Geo. IV. & 1 Will. IV. c. 65, s. 16; Cons. Ord. XXXV., 1, (5).

(*c*) 11 Geo. IV. & 1 Will. IV. c. 65, s. 17. As to the Central Office, see R. S. C. Dec. 1879.

in which the infant is entitled to an indefeasible estate in possession (*d*); but leases have been granted, where the applicants between them were entitled to the whole fee, although there was no person in existence entitled to an indefeasible estate in possession (*e*); and building leases have been sanctioned, where the infant was seised in fee simple in reversion after a life estate by the curtesy vested in his father (*f*).

A conditional contract should ordinarily be entered into before the application is made. Where the application is made by petition, the Court will, if satisfied that the proposed lease is for the infant's benefit, make an order at the hearing, directing the conditional contract to be carried into effect, and a lease to be settled in conformity therewith. If the Court is not satisfied, an inquiry may be directed, or the petition may be adjourned into Chambers, and the order approving the lease made there (*g*).

Court may  
authorise re-  
newals where  
lessor is out of  
jurisdiction.

Where any person who might, if within the jurisdiction, be compelled to renew any lease, shall not be within the jurisdiction, the Court may, upon the petition of any person entitled to such renewal, whether under disability or not, direct such person as the Court shall appoint to surrender the subsisting, and execute a new lease in the name of the person who ought to have renewed (*h*).

Upon any renewal under the Act fines are to be paid, and counterparts executed (*i*).

The guardian of any infant, with the approbation of the Chancery Division, to be obtained on petition of such

(*d*) *Re Evans*, 2 M. & K. 318 ;  
*exp. Legh*, 15 Sim. 445.

(*e*) *Re Clark*, L. R. 1 Ch. 292.

(*f*) *Re Letchford*, 2 Ch. D. 719 ;  
*re Spencer*, W. N. (1867), 268.

(*g*) *Daniell*, 1920.

(*h*) 11 Geo. IV. & 1 Will. IV. c.  
65, s. 18 ; and see 1 & 2 Vict. c.  
62.

(*i*) 1 Will. IV. c. 65, s. 20. As  
to the application of the fines, see  
s. 21.

guardian, may enter into any agreement on behalf of such infant which such guardian might have entered into by virtue of 1 Geo. I. c. 10, s. 9 (*j*).

The Court may, upon the petition of the guardian of Maintenance, any infant, in whose name any stock is standing, order the whole, or any part of the dividends of such stock to be paid to the guardian, or to any other person for the maintenance of such infant (*k*).

(*j*) 1 Will. IV. c. 65, ss. 25, 26.  
The Act referred to sanctioned certain agreements for the augmentation of small livings.

(*k*) 1 Wm. IV. c. 65, s. 32;  
Seton, 733; *re Pongerard*, 1 De G. &  
S. 426; *re Westwood*, 6 N. R. 316;  
*Gardner v. Cowles*, 3 Ch. D. 304.

## CHAPTER XII.

### CONFIRMATION OF SALES.

Confirmation  
of Sales Act,  
1862.  
Sale of surface  
and minerals  
separately.

EVERY trustee and other person authorised to dispose of land by way of sale, exchange, partition, or enfranchisement, may, unless forbidden by the instrument creating the trust or power, so dispose of such land, with an exception or reservation of any minerals, and with or without rights and powers incidental to the working, getting, or carrying away of such minerals; or may (unless forbidden as aforesaid) dispose of, by way of sale, exchange, or partition, the minerals, with or without such rights or powers, separately from the residue of the land; and in either case, without prejudice to any future exercise of the authority with respect to the excepted minerals, or (as the case may be) the undisposed-of land; but the Act does not enable any such disposition, without the previous sanction of the Court of Chancery, to be obtained on petition, in a summary way, of the trustee or other person authorised as aforesaid, which sanction once obtained, shall extend to the enabling from time to time of any disposition within this enactment of any part or parts of the land comprised in the order to be made on such petition, without the necessity of any further or other application to the Court (a).

With sanction  
of Court.

(a) 25 & 26 Vict. c. 108, s. 2; *cf. Settled Estates Act, ante, p. 108.*  
Seton, 1259; Daniell, 1967; and For form of petition, see *post*.

Mortgagees are within the Act, and may have liberty to sell, under their power of sale, with a reservation of minerals (b); and such liberty has been given, where the mortgagees had filed a bill for foreclosure, and the cause had been set down for hearing, and though the petition was not instituted in the cause, but only in the matter of the Act (c).

The Court has power under the Act to authorise dispositions generally, without reference to any particular sale (d).

The *cestuis que trust* ought to be made parties to the petition (e); but it is not necessary to serve beneficiaries entitled in remainder (f); and where the application is made by a mortgagee, the petition need not be served on any subsequent incumbrancers (g), nor, it seems, on the mortgagor (h).

Where, under a power of sale, a *bonâ fide* sale shall be made of an estate with the timber thereon, or any other articles attached thereto, and the tenant for life, or any other party to the transaction, shall by mistake, be allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles, the Court may, upon an application in a summary way, declare that upon payment by the purchaser, or the claimant under him, of the full value of the timber and articles at the time of sale, with interest, as the Court directs, and the settlement of the said moneys and interest

Mortgagees within the Act.

General powers may be given.

Parties. Service.

Lord St. Leonards' Act, 1859. Petition to establish sale where timber-money has been misapplied.

(b) *Re Beaumont*, L. R. 12 Eq. 86.

(c) *Re Wilkinson*, L. R. 13 Eq. 634.

(d) *Re Willway*, 32 L. J. Ch. 226; *re Wynn*, L. R. 16 Eq. 237.

(e) *Re Palmer*, L. R. 13 Eq. 408; *re Brown*, 9 Jur. N. S. 349.

(f) *Re Pryse*, L. R. 10 Eq. 531; *re Powell*, W. N. (1874), 221; *re Nagle*, 6 Ch. D. 104.

(g) *Re Beaumont*, L. R. 12 Eq. 86.

(h) *Re Wilkinson*, L. R. 13 Eq. 634.

under the direction of the Court upon the parties entitled thereto, the sale ought to be established : and upon such payment and settlement being made, the Court may declare that the sale is valid, and thereupon the legal estate shall vest as if the power had been duly exercised ; and the costs of the application as between solicitor and client shall be paid by the purchaser (*i*).

(*i*) 22 & 23 Vict. c. 35, s. 13 ; see Daniell's Forms, 2278. Lewin, 396. For form of petition,



## CHAPTER XIII.

### LAND TAX REDEMPTION ACTS.

UPON the application by petition of the person beneficially interested in the rents and profits of a settled estate, but who is restricted from cutting timber, the Chancery Division may direct that timber shall be cut down, and the produce applied in discharge of the land tax affecting the estate (*a*). Timber.

Any person or persons (not being bodies politic, or corporate, or companies, or trustees for charitable or public purposes, and not holding under a grant from the Crown or any Act of Parliament by which an interest is reserved to the Crown) entitled to any manors in England of which any copyhold or customary estates shall be holden, may, with the approbation of the Court, to be signified by an order on petition, enfranchise such copyhold or customary estates (*b*). Enfranchise-  
ment.

When part of an estate subject to any trusts or encumbrances is proposed to be sold for redeeming the land tax thereon, the Court may order such part to be conveyed to the purchaser, discharged from the incumbrances affecting the whole of the estate, upon being satisfied that the part of the estate proposed to be left unsold is a sufficient Land tax.

(*a*) 42 Geo. III. c. 116, s. 67;      (*b*) 42 Geo. III. c. 116, s. 60.  
and see 16 & 17 Vict. c. 117.

security for the performance of the trusts or payment of the incumbrances (c).

When part of an estate is proposed to be sold or mortgaged for the purpose of redeeming the land tax, the persons interested in remainder or reversion, or their guardians, committees, or trustees, may, if they conceive themselves aggrieved, apply by petition to the Court; and the Court may order the sale or mortgage to be suspended or to be proceeded with under the directions of the Court (d).

Where under the powers of the Act, the reversion has been bought by the persons beneficially entitled to the rents and profits, and difficulty has arisen as to the mode of settling it, the Land Tax Commissioners may direct an application by petition to the Court for its directions on the subject (e).

Application  
of surplus  
moneys.

Where more stock has been bought than is required to redeem the land tax on any estate, and the amount of the surplus exceeds £200, it is to be transferred to the Chancery Paymaster; and may, by an order of the Court made upon petition, be directed to be applied in the discharge of any debts affecting the lands in respect of which the land tax was redeemed, or in the purchase of other lands to be settled to the same uses; and in the meantime the dividends are to be paid to the persons entitled to the rents and profits of the land (f).

Where part of the glebe land of a vicarage had been sold, it was held that the surplus moneys could not be applied towards repairs and improvements of the vicarage house (g).

(c) 42 Geo. III. c. 116, s. 58.

(d) *Ibid.*, s. 97.

(e) *Ibid.*, s. 85.

(f) *Ibid.*, s. 100.

(g) *Re Nether Stowey Vicarage*,  
L. R. 17 Eq. 156.

Where the consideration for any redemption of the land tax exceeds £500 stock, any person aggrieved by the decision of the Land Tax Commissioners, may apply by petition, and the Court may grant such relief as it thinks fit (*h*).

(*h*)            42 Geo. III. c. 116, s. 197.

## CHAPTER XIV.

### FINES AND RECOVERIES ABOLITION ACT.

Where protector of settlement is lunatic.

WHEN the protector of a settlement is a lunatic or of unsound mind, the Lord Chancellor, or other person entrusted with the care of lunatics, shall be protector; and where the protector shall be convicted of treason or felony, or shall be an infant, or his existence cannot be ascertained, or where there is no protector, the Chancery Division shall be the protector (*a*).

Court may consent.

When the Lord Chancellor or other person entrusted as aforesaid, or the Chancery Division is the protector of a settlement, he or the Chancery Division, as the case may be, is empowered, on the motion or petition of the tenant in tail under the settlement, to consent to a disposition under the Act by such tenant in tail, and to make such order in the matter as shall be thought necessary; but if any other person shall be joint protector, the consent of such person must also be obtained (*b*).

Title of petition.

The application appears to be invariably made by petition, which should be intituled in the matter of the protector, and in the matter of the Act; and, when presented in an action, in such action also (*c*).

(*a*) 3 & 4 Wm. IV. c. 74, s. 33; Seton, 1282.

(*b*) *Ibid.*, s. 48. For form of petition, see *re Gravenor*, 1 De G. & S. 700.

(*c*) Daniell, 1924; and see *re Blewitt*, 6 D. M. & G. 187, 195; *re Gravenor*, 1 De G. & S. 700, as to service.

Under the provisions of the Act, the Lord Chancellor is the protector where the tenant for life is resident in Ireland, and has been found a lunatic there (*d*); and where the tenant in tail in possession is a lunatic, the Court can consent to the first tenant in tail in remainder barring the subsequent entails (*e*). The Court of Chancery became protector upon the conviction for felony of the husband of a tenant for life (*f*).

Cases within  
the Act.

In giving or withholding its consent, the Court will look to the interests of the family; and its aim will be rather to protect the objects of the settlement, than to give any benefit to one member of the family to the exclusion of the others (*g*). It will therefore consent where the intention is to provide for the family of the lunatic (*h*); but it will decline to do so, where the application is not for the benefit of the lunatic's estate (*i*); or when it will benefit one member at the expense of the others (*k*).

Where the  
Court will  
consent.

(*d*) *Re Graydon*, 1 Mac. & G. 655.

116; *re Gravenor*, 1 De G. & S. 700.

(*e*) *Re Blewitt*, 6 D. M. & G. 187; *re Wood*, 3 M. & C. 266.

(*h*) *Grant v. Yea*, 3 M. & K. 245.

(*f*) *Re Wainwright*, 1 Ph. 258; but see now 33 & 34 Vict. c. 23; Seton, 1282.

(*i*) *Re Tharp*, 3 Ch. D. 59.

(*k*) *Re Blewitt*, 3 M. & K. 250; but see S. C. 6 D. M. & G. 187.

(*g*) *Re Newman*, 2 M. & C. 112,

## CHAPTER XV.

### JUDGMENT DEBTORS ACT, 1864.

EVERY creditor to whom any land shall have been actually delivered in execution by virtue of a writ of *elegit* or other lawful authority in pursuance of a judgment (*a*), statute, or recognizance, and whose writ or other process of execution shall be duly registered, shall be entitled, while such registry continues in force, to obtain from the Court, upon petition, an order for sale of his debtor's interest in such land; and every such petition may be served upon the debtor only, and the Court shall direct all necessary and proper inquiries as to the debtor's interest and his title thereto (*b*).

Actual delivery.

The return of the sheriff to an *elegit* constitutes actual delivery (*c*); but there may also be equitable execution; and land may be actually delivered by a writ of sequestration (*d*), or by the appointment of a receiver (*e*).

Equitable execution.

But unless such equitable execution has taken place, a judgment creditor cannot apply for a sale under sect. 4,

(*a*) "Judgment" includes registered decrees, orders of Courts of Equity and Bankruptcy, and other orders having the operation of a judgment; 27 & 28 Vict. c. 112, s. 2.

(*b*) 27 & 28 Vict. c. 112, s. 4. As to appearance by the debtor, see *Kidd v. Tallentire*, W. N. (1877), 21.

(*c*) *Champneys v. Burland*, 19 W. R. 148.

(*d*) *Re Rush*, L. R. 10 Eq. 442; but see *Johnson v. Burgess*, L. R. 15 Eq. 398.

(*e*) *Hatton v. Haywood*, L. R. 9 Ch. 229; *Kidd v. Tallentire*, W. N. (1877), 21; and see *Anglo-Italian Bank v. Davies*, 9 Ch. D. 275.

where the interest of the debtor is an equity of redemption (*f*), or other merely equitable interest (*g*), or is an interest in remainder (*h*), or has been already extended and delivered under a prior elegit (*i*).

Equitable execution may be obtained without redeeming prior incumbrances (*k*).

In a suit to obtain a declaration that the judgment is a charge on the land, a sale may be ordered without proceeding by petition under the Act (*k*).

The surplus lands of a railway company may be ordered to be sold under this section (*l*). The Court, however, will not generally direct an immediate sale, but will only direct inquiries (*m*); or will direct inquiries, and a sale after certificate (*n*); but an immediate order for sale has been made without an inquiry (*o*). Surplus lands of railway.

If it shall appear on making such inquiries that any other debt due on any judgment, statute, or recognizance, is a charge on such land, the creditor entitled to the benefit of such charge (whether prior or subsequent to the charge of the petitioner) is to be served with notice of the order for sale, and after such notice is to be bound thereby, and is to be at liberty to attend the proceedings under the Other charges.

(*f*) *Thornton v. Finch*, 4 Giff. 515; *Lyster v. Dolland*, 1 Ves. jun. 431; *Plunket v. Pearson*, 2 Atk. 290; *Kidd v. Tallentire*, W. N. (1877), 21.

(*g*) *Re Duke of Newcastle*, L. R. 8 Eq. 700; *Tillett v. Pearson*, 22 W. R. 209.

(*h*) *Re South*, L. R. 9 Ch. 369.

(*i*) *Re Cowbridge Ry. Co.*, L. R. 5 Eq. 413. Priority is determined by the date at which the writ is put into the hands of the sheriff; *Guest v. Cowbridge*, L. R. 6 Eq. 619.

(*k*) *Wells v. Kilpin*, L. R. 18

Eq. 298; *Beckett v. Buckley*, L. R. 17 Eq. 435.

(*l*) *Re Ogilvie*, L. R. 7 Ch. 174.

(*m*) *Re Bishop's Waltham Rly. Coy.*, L. R. 2 Ch. 382; *re Tewkesbury Rly. Coy.*, W. N. (1873), 12; and for form of order, see *Gardner v. London, &c.*, L. R. 2 Ch. 385.

(*n*) *Re Hull & Hornsea Rly. Coy.*, L. R. 2 Eq. 262; *Howson v. Trant*, 21 W. R. 781.

(*o*) *Re Calne Rly. Coy.*, L. R. 9 Eq. 658; but see *re Tewkesbury Rly. Coy.*, W. N. (1873), 12.

same, and to have the benefit thereof; and the proceeds of such sale are to be distributed among the persons who may be found entitled thereto according to their respective priorities (*p*).

Person claiming through the debtor.

Every person claiming any interest in the land, through or under the debtor, by any means subsequent to the delivery of such land in execution is bound by the order for sale and the proceedings consequent thereon (*q*).

Costs.

The petitioner, if successful, is generally allowed to add his costs to his debt (*r*).

(*p*) 27 & 28 Vict. c. 112, s. 5.  
For remarks on this section see  
*Hatton v. Haywood*, L. R. 9 Ch.  
229.

(*q*) 27 & 28 Vict. c. 112, s. 6.

(*r*) *Re Hull & Hornsea Rly.*

*Coy.*, L. R. 2 Eq. 262; *re Calne Rly. Coy.*, L. R. 9 Eq. 659. For other orders as to costs, see *Johnson v. Burgess*, L. R. 15 Eq. 398; *Kidd v. Tallentire*, W. N. (1877), 21; *re South*, L. R. 9 Ch. 369.



## CHAPTER XVI.

### ECCLESIASTICAL LEASES.

WHERE an ecclesiastical lease is vested in trustees, they may, with the consent of the person entitled, raise a sum out of any moneys or securities similarly settled, and in other cases they may, with the sanction of the Court to be obtained on petition, raise money out of any property similarly settled, for the purpose of purchasing the reversion of the property (*a*). Purchase of reversion.

Where such a lease is vested in trustees, who have no power of sale, they may, with the consent in writing of the person beneficially entitled, or if there is no person capable of giving such consent, or such consent is withheld, then, with the sanction of the Court to be obtained on petition, sell all or any part of such property; and the purchase money is to be paid to the trustees, and invested, and held by them upon the same trusts, as far as circumstances will admit, as the leasehold property if not sold would have been subject to; and such investment may, with the sanction of the Court, be made in the purchase of other leasehold estates, whether held under any ecclesiastical corporation or not (*b*). Sale of lease.

Where there is no absolute paramount trust for renewal, the Court will refuse to sanction, to the prejudice of the

(*a*) 23 & 24 Vict. c. 124, ss. 36, 37; *re Adams*, 17 W. R. 582.

(*b*) 23 & 24 Vict. c. 124, s. 38.

See *re Cheshire*, L. R. 7 Ch. 50: where the tenant for life was of unsound mind, not so found.

tenant for life, whose income would be thereby diminished, an agreement for the purchase of the reversion of leaseholds, which cannot be renewed, and will give him the accumulated fund (c).

But where there is a predominant trust for renewal, showing a paramount intention on the part of the testator that the remaindermen should succeed to the enjoyment of the *corpus*, the Court will only give the tenant for life the income of the invested purchase money and of the renewal fund (d).

(c) *Hayward v. Pile*, L. R. 5 Ch. 327; *Hollier v. Burne*, L. R. 16 Eq. 163; *re Wood*, L. R. 10 Eq. 625; *Richardson v. Moore*, 6 Madd. 572; Seton, 1273; and see *Lands Clauses Act*, s. 74, *ante*, p. 74.

(d) *Maddy v. Hale*, 3 Ch. D.

## CHAPTER XVII.

### WINDING-UP PETITIONS.

AN application to wind up a company either by the Court or subject to the supervision of the Court is made to the Chancery Division by petition (*a*). The application may be made on several grounds; but it is not imperative on the Court to make an order (*b*); and, having regard to the wishes of creditors and contributories, it may refuse the application. It is necessary therefore in presenting a petition to consider not only whether the petitioner has good ground for making the application, but also whether the opposition of creditors or contributories is likely to be such as to override the petitioner's right to an order (*c*).

#### *Grounds for presenting Petition.*

A winding-up order may be made whenever a company has passed a special resolution requiring the company to be wound up by the Court (*d*).  
Special resolution.

The Act also provides that a company may be ordered to be wound up whenever it does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year (*e*). But this is  
Not commence, ing business.

(*a*) Companies Act, 1862, s. 82.

(*b*) *European Life Ass.*, L. R. 9 Eq. 122.

(*c*) Companies Act, 1862, ss. 91, 149. For a summary of the cases

decided under these sections, see Buckley, 207, 272.

(*d*) Companies Act, 1862, s. 79.

(*e*) *Ibid.*

only a ground for making a winding-up order where there seems to be no intention of carrying on business, and where the delay cannot be satisfactorily accounted for (*f*). Thus where a company, established more than two years, had not commenced business, but had taken steps to carry out the objects of the company, and nine-tenths of the shareholders opposed the petition, an order was refused (*g*). But where the Court is satisfied that the business never will be commenced, an order will not be refused, though the company has never received any money and has no debts (*h*); and where a company has never done any business, and a majority of the shareholders unreasonably refuse to pass resolutions for voluntarily winding up, an order will be made (*i*). Where there are other grounds for winding up a company, an order may be made, notwithstanding the year has not expired (*k*); but a strong case must be shown (*l*).

It is not ceasing to carry on business for a company to abandon one of several purposes for which it was established, provided such abandoned purpose was not the principal purpose and object of the company (*m*). Nor will a company which has amalgamated with another be wound up on the ground that it has ceased to carry on business (*n*).

(*f*) *Metropolitan Rly. Warehousing Coy.*, 15 W. R. 1121.

(*g*) *Petersburg Gas Co.*, W. N. (1874), 196; but see *Middlesborough Assembly Rooms Co.*, W. N. (1879), 162.

(*h*) *Tumacacori Mining Co.*, L. R. 17 Eq. 534; but see *New Gas Generator Co.*, 4 Ch. D. 874.

(*i*) *Tumacacori Mining Co.*, *supra*; and see *Princess of Reuss v. Bos*, L. R. 5 H. L. 176; *Middlesborough Assembly Rooms Co.*, W. N. (1879), 162.

(*k*) *London & County Coal Co.*, L. R. 3 Eq. 355.

(*l*) *Hop & Malt Co.*, W. N. (1866), 222; *Langham Skating Rink Co.*, 5 Ch. D. 669, 685.

(*m*) *Norwegian Iron Co.*, 35 Beav. 223; *Patent Bread Co.*, 14 W. R. 787; *New Gas Co.*, 5 Ch. D. 703; but see *Langham Skating Rink*, 5 Ch. D. 669.

(*n*) *National Financial Corp.*, 14 W. R. 907; and see *Anglo-Australian Ass. Co.*, 1 Dr. & S. 113.

A company may be wound up whenever its members are reduced in number to less than seven (o). But this is not in itself a sufficient reason for winding up a company (p). On the contrary, the Court will not make a winding-up order where there are very few shareholders, and where there is no difficulty in winding up the company out of Court (q). But where there is a suspicion of fraud (r), or an overwhelming influence of one of the shareholders (s); or a difficulty in making a final disposition of the assets (t), the Court will make an order.

A company may be wound up whenever it is unable to pay its debts (u).

A company is deemed unable to pay its debts whenever a creditor, by assignment or otherwise, in a sum exceeding £50 then due, has left, at the registered office, a demand under his hand for payment of his debt, and the company has for three weeks from such demand neglected to pay, secure, or compound for such debt to the reasonable satisfaction of such creditor (x). But this section does not apply where there is a *bonâ fide* dispute as to the amount of the debt, though it be admitted to exceed £50 (y). A winding-up order is not however had because founded on a demand which turns out afterwards to be excessive (z). Where there is no registered office, the demand may be

Less than  
seven share-  
holders.

Unable to pay  
debts.

(o) Companies Act, 1862, s. 79.

(p) Buckley, 170.

(q) *Sea & River Co.*, L. R. 2 Eq. 545; *Natal Co.*, 1 H. & M. 639; but see *Sanderson's Patents*, L. R. 12 Eq. 188.

(r) *New Gas Generator Co.*, 4 Ch. D. 874; *London & County Coal Co.*, L. R. 3 Eq. 355.

(s) *West Surrey Tanning Co.*, L. R. 2 Eq. 737.

(t) *Anglo-Mexican Mint Co.*, W.

N. (1875), 168.

(u) Companies Act, 1862, s. 79.

(x) *Ibid.*, s. 80; and see *post*, p. 166.

(y) *Brighton Club Co.*, 35 Beav. 204; and see *Catholic Publishing Co.*, 2 D. J. & S. 116; *London & Paris Banking Corp.*, L. R. 19 Eq. 444; *Brown v. Keeble*, W. N. (1879), 173; Buckley, 168.

(z) *Cardiff Coal Co. v. Norton*, L. R. 2 Ch. 405, 410.

left at the unregistered office (a). The petition must not be presented until the twenty-one days have expired (b).

In considering the solvency of a company, the Court will take no account of future liabilities or profits (c), unless the company is a life assurance company (d).

A company will be deemed unable to pay its debts whenever execution or other process, issued on a judgment, decree, or order, obtained in any Court in favour of any creditor, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part (e).

A company will also be deemed unable to pay its debts whenever it is shown to the satisfaction of the Court that such is the case (f). Thus, a company will be deemed unable to pay its debts when its acceptance is dishonoured (g); and when a judgment creditor is told by the company that they have no assets on which he can levy (h).

Creditor's  
petition.

A creditor, as between himself and the company, is entitled, *ex debito justitiæ*, to a winding-up order, provided he brings his case within the Act (i), and provided his debt is not disputed (k). His debt need not exceed £50 if he show his right to an order on some ground

(a) *British & Foreign Gas Co.*, 337.  
13 W. R. 649.

(b) *Buckley*, 174.

(c) *European Life Ass. Soc.*, L.  
R. 9 Eq. 122.

(d) *Life Assurance Companies  
Act*, 1870 (33 & 34 Vict. c. 61)  
s. 21.

(e) *Companies Act*, 1862, s. 80;  
and see *re Flagstaff Co.*, L. R. 20  
Eq. 268.

(f) *Companies Act*, 1862, s. 80  
(4).

(g) *Globe Steel Co.*, L. R. 20 Eq.

(h) *Flagstaff Co.*, L. R. 20 Eq.  
268.

(i) *Re London Suburban Bk.*,  
L. R. 6 Ch. 641, 643; *Western  
Canada Oil Co.*, L. R. 17 Eq. 1;  
and see *post*, p. 166.

(k) *Buckley*, 168. The Court  
will restrain the presentation of a  
petition, the object of which is to  
coerce the payment of a disputed  
debt, *Brown v. Keeble*, W. N.  
(1879), 173.

other than non-payment after the statutory demand (*l*). But the wishes of the majority of the creditors must be regarded, and as between them and the petitioning creditor he is not entitled, *ex debito justitiæ*, to a compulsory order (*m*). In compliance, therefore, with such wishes a supervision order will be made (*n*), or when the company is in voluntary liquidation an order will be refused (*o*). The Court may also have regard to the wishes of a large majority of shareholders, and instead of making an immediate order, may direct the petition to stand over, if there is reason to believe that the debts will be paid or an arrangement will be come to (*p*). A creditor, moreover, is only entitled to an order where there is a reasonable chance of his getting paid by it. If, therefore, the assets are already charged in favour of debenture holders in excess of their value an order will be refused (*q*).

In determining whether a life assurance company is insolvent the Court will take into account its contingent or prospective liability under policies, or annuity, or other existing contracts (*r*).

A winding-up order may be made whenever the Court is of opinion that it is just and equitable that the company should be wound up (*s*). This clause does not give the Court a loose discretion (*t*), but must be read with

(*l*) Buckley, 177.

(*m*) *West Hartlepool Co.*, L. R. 10 Ch. 618; *Lonsdale Vale Co.*, 16 W. R. 601; *Uruguay Rly. Co.*, 11 Ch. D. 372; *Horbury Bridge Coal Co.*, W. N. (1879), 51.

(*n*) *West Hartlepool Co.*, L. R. 10 Ch. 618.

(*o*) *Langley Mill Co.*, L. R. 12 Eq. 26; *Universal Drug Ass.*, 22 W. R. 675; *Horbury Bridge Coal Co.*, W. N. (1879), 51.

(*p*) *City & County Bank*, L. R.

10 Ch. 470; *Brighton Hotel Co.*, L. R. 6 Eq. 339; *Western Canada Oil Co.*, L. R. 17 Eq. 1; but see *Home Ass. Co.*, L. R. 12 Eq. 112; *International Contract Co.*, 14 L. T. N. S. 726.

(*q*) *St. Thomas' Dock Co.*, 2 Ch. D. 116; *Uruguay Rly. Co.*, 11 Ch. D. 372.

(*r*) *Post*, p. 165.

(*s*) Companies Act, 1862, s. 79.

(*t*) *Suburban Hotel Co.*, L. R. 2 Ch. 737; *Joint Stock Coal Co.*, L.

Just and  
equitable.

reference to matters *ejusdem generis* as those in the previous clauses (*u*). It does, however, give the Court power to wind up in cases not before mentioned, where a strong case is made (*x*). Thus, it is "just and equitable" that a company should be wound up where it is a mere "bubble company" (*y*); but the Court will not make an order merely on the ground of mismanagement or misapplication of the company's funds, unless it has produced insolvency (*z*); nor on the ground that the company is proceeding *ultra vires* (*a*); nor merely on the ground that the company is a losing concern (*b*); nor will the Court in considering whether it is just and equitable to make a winding-up order have any regard to the future prospects or liabilities of the company (*c*), unless the company is a life assurance company (*d*).

Compulsory  
order after  
voluntary  
winding up.

The Court may make an order for winding up a company already in voluntary liquidation. Such an order will be made whenever the rights of creditors will be prejudiced by the voluntary winding up (*e*); or, whenever there are transactions justifying or requiring investigation (*f*); or

R. 8 Eq. 146; *National Live Stock Co.*, 26 Beav. 153; *New Zealand Co.*, W. N. (1873), 174.

(*u*) *Exp. Spackman*, 1 H. & T. 229; *Suburban Hotel Co.*, L. R. 2 Ch. 737; *Anglo-Greek Steam Co.*, L. R. 2 Eq. 1; *European Ass. Soc.*, L. R. 9 Eq. 122.

(*x*) *Langham Skating Rink*, 5 Ch. D. 669.

(*y*) *Anglo-Greek Steam Co.*, L. R. 2 Eq. 1; *London & Country Coal Co.*, L. R. 3 Eq. 355.

(*z*) *Anglo-Greek Steam Co.*, L. R. 2 Eq. 1; *Bwlch-y-Plwm Co.*, 17 L. T. N. S. 235; *National Live Stock Co.*, 26 Beav. 153; *Anglo-Egyptian Navigation Co.*, L. R. 8 Eq. 660.

(*a*) *Irrigation Co.*, L. R. 6 Ch. 176, 184.

(*b*) *Suburban Hotel Co.*, L. R. 2 Ch. 737, 746; but see *Great Northern Mining Co.*, 17 W. R. 462.

(*c*) *European Life Ass.*, L. R. 9 Eq. 122.

(*d*) Life Assurance Companies Act, 1870 (33 & 34 Vict. c. 61), s. 21; *post*, p. 165.

(*e*) Comp. Act, 1862, s. 145.

(*f*) *Northumberland Banking Co.*, 2 De G. & J. 357, 378; *Littlehampton Steamship Co.*, 34 L. J. (Ch.) 237; *Barnes's Banking Co.*, 14 W. R. 722; *British Alliance Corp.*, 9 Ch. D. 635.



where the proceedings under the voluntary winding up have been dilatory and unsatisfactory (*g*).

A creditor is entitled to an order *ex debito justitiæ* if he show that his rights will be prejudiced by a voluntary winding up; but if there is nothing to show that he will not be paid in full, and other creditors oppose the petition, it will be dismissed (*h*).

After a resolution to wind up voluntarily a shareholder cannot, as a general rule, obtain a compulsory or a supervision order. The only exceptions to the rule are where the resolution has been passed fraudulently (*i*), or where creditors appear to support the petition (*k*).

The Court has jurisdiction to make a compulsory order though a supervision order has already been made; but there are few cases in which the Court would deem it desirable to exercise such jurisdiction (*l*).

Where a company is being voluntarily wound up, the Court is reluctant to interfere, and will not make a supervision order unless there has been fraud or undue overbearing influence (*m*); or unless, *semble*, creditors and contributories desire it (*n*).

Mere misconduct on the part of the liquidator is not

(*g*) *Manchester Queensland Co.*, 15 W. R. 1070; *Fire Annihilator Co.*, 32 Beav. 561; *Tramway Wheel Co.*, W. N. (1873), 160.

(*h*) *Universal Drug Ass.*, 22 W. R. 675; *Caerphilly Colliery Co.*, 32 L. T. N. S. 15.

(*i*) *Beaujolais Wine Co.*, L. R. 3 Ch. 15; *London Discount Co.*, L. R. 1 Eq. 277; *West Surrey Tanning Co.*, L. R. 2 Eq. 737.

(*k*) *Gold Co.*, 11 Ch. D. 701; *Lonsdale Vale Co.*, 16 W. R. 601; *Oriental Commercial Bank*, 15 W. R. 7. As to delay in presenting the petition, see *Gold Co.*, 11 Ch.

D. 701, 714.

(*l*) *Orrell Colliery Co.*, W. N. (1879), 106.

(*m*) *Langham Skating Rink Co.*, 5 Ch. D. 669, 685; *Imperial Bank of China*, L. R. 1 Ch. 339; *Beaujolais Wine Co.*, L. R. 3 Ch. 15; *London Discount Co.*, L. R. 1 Eq. 277; *Irrigation Co.*, L. R. 6 Ch. 176; *St. David's Mining Co.*, 14 W. R. 755; *Madras Coffee Co.*, 17 W. R. 643.

(*n*) *Owen's Patent Wheel Co.*, 29 L. T. N. S. 672; *Irrigation Co.*, L. R. 6 Ch. 176.

Compulsory  
order after a  
supervision  
order.

Supervision  
order.

in itself sufficient ground for making a supervision order (o).

If the resolution for voluntary winding up was not properly passed, the Court cannot make a supervision order, for it would be an order to continue that which was, in its inception, invalid (p).

A supervision order has been made although creditors asked for a compulsory order (q). It has been said that the Court leans rather to a winding-up under supervision than to a winding-up by the Court (r); but Jessel, M. R., in a recent case said that in the case of a large liquidation a compulsory order is cheaper and better than a supervision order (s). It would seem, therefore, that in such cases a compulsory order would be more readily granted.

### *What Companies may be Wound up.*

The following companies, with the exception of unregistered companies, which can only be wound up compulsorily (t), may be wound up either compulsorily or subject to supervision:—

All companies registered under the Act, whether formed under it or not (u);

All companies registered under the Joint Stock Companies Acts (v);

All partnerships, associations, or companies (except railway companies incorporated by Act of Parliament),

(o) *London & Mediterranean Banking Co.*, 15 W. R. 33; *Yorkshire Fibre Co.*, L. R. 9 Eq. 650; *London Bank of Scotland*, 15 W. R. 1103.

(p) *Bridport Brewery Co.*, L. R. 2 Ch. 191.

(q) *Owen's Patent Wheel Co.*, 29 L. T. N. S. 672.

(r) *Inns of Court Hotel*, W. N. (1866), 348; *United Merthyr Collieries*, 16 L. T. N. S. 170.

(s) *Western District Bank*, W. N. (1879), 151.

(t) Companies Act, 1862, s. 199

(u) *Ib.* ss. 79, 180, 196.

(v) *Ib.* ss. 176, 177.

What companies may be wound up.

consisting of more than seven members, and not registered under the Act (*w*).

The exception as to railway companies only applies to companies whose principal object is the construction of a railway. A dock company having power to make a branch railway is not therefore within the exception (*x*). A railway company whose railway is authorized to be abandoned may be wound up (*y*).

A company incorporated by special Act of Parliament may be ordered to be wound up. Thus, a ferry company (*z*), a telegraph company (*a*), and a canal company (*b*), so incorporated, have been wound up; and such a company may be wound up, though the property of the company cannot be sold without a special Act of Parliament; and the order may be made on the petition of the company itself (*c*). But where the special Act declares the works authorized to be of public advantage, the Court will not make an order, unless it is positively shown that there is no other remedy (*d*).

Unincorporated companies, which have never been registered under any Act, may be wound up (*e*).

A company which ought to be, but is not registered, is an illegal association (*f*); and such an association ought

Railway companies.

Companies incorporated by special Act.

Unincorporated companies.

Illegal companies.

(*w*) Companies Act, 1862, s. 199.

(*x*) *Exmouth Docks Co.*, L. R. 17 Eq. 181.

(*y*) 32 & 33 Vic. c. 114, s. 4; *Skipton Rly.*, 20 L. T. N. S. 359.

(*z*) *Isle of Wight Ferry Co.*, 2 H. & M. 597.

(*a*) *Electric Telegraph of Ireland*, 22 Beav. 471.

(*b*) *Basingstoke Canal*, 14 W. R. 956; *Wey Canal*, L. R. 4 Eq. 197; *Bradford Navigation*, L. R. 10 Eq. 331.

(*c*) *Bradford Navigation*, L. R.

10 Eq. 331.

(*d*) *Exmouth Docks Co.*, L. R. 17 Eq. 188, 190; *Herne Bay Waterworks Co.*, 10 Ch. D. 42; *post*, p. 167.

(*e*) *Bank of London Ass.*, L. R. 6 Ch. 421, 425; *Family Endowment Soc.*, L. R. 5 Ch. 118; *Womersley v. Merritt*, L. R. 4 Eq. 695.

(*f*) As to what companies ought to be registered, see Companies Act, 1862, s. 4, and Buckley, 2; *Sykes v. Beadon*, 11 Ch. D. 170.

not, it would seem, to be wound up by the Court (*g*). But since such a company cannot set up its own illegality as a defence (*h*); *quære*, whether such a company ought not to be wound up upon the petition of a *bond fide* creditor, or even of a contributory, where he is a perfectly innocent party (*i*).

Dissolved companies.

A company which has been wound up and dissolved, cannot be wound up by the Court, unless the dissolution can be impeached on the ground of fraud (*j*); but where, though the company has been dissolved, the members are still under liabilities incurred before the dissolution, the company may be ordered to be wound up; and orders have been made to wind up companies, which have amalgamated with, or transferred their assets and liabilities to, other companies (*k*).

Inchoate company.

A company which it is intended to form, but which is in fact never formed, is not an unregistered company which can be wound up under the Act, though steps may have been taken, and preliminary expenses incurred, with a view to its formation (*l*). *Quære*, whether persons associating together, for the purpose of forming a company, are an association within the meaning of the Act (*m*).

What is an association.

Whether an association or partnership has been formed is a question of evidence (*mm*). Where more than seven persons subscribed to a project for purchasing property,

(*g*) *Hargrove & Co.*, L. R. 10 Ch. 542, 548.

(*h*) *Doolan v. Midland Rly.*, 2 App. Cas. 792, 806.

(*i*) *South Wales Steamship Co.* 2 Ch. D. 763.

(*j*) *London & Caledonian Co.*, 11 Ch. D. 140; *Pinto Mining Co.*, 8 Ch. D. 273.

(*k*) *Family Endowment Soc.*, L.

R. 5 Ch. 118; *exp. Phillips*, 3 De G. & S. 3; *exp. Dee*, 3 De G. & S. 112; and see *Times Life Ass. Co.*, L. R. 5 Ch. 381.

(*l*) *Imperial Anglo-German Bank*, 26 L. T. N. S. 229.

(*m*) *Ibid.*; *cf. Royal Victoria Syndicate*, *infra*.

(*mm*) See *Hargrove & Co.*, L. R. 10 Ch. 542; and *post*, p. 164.

with the intention of selling it to a company, to be formed for the purpose, it was held that the subscribers were a partnership, and could be wound up (*n*). An order has been made to wind up four firms associated together for the purpose of trading, and containing in all eight members (*o*).

A company registered under the Act can be wound up, although all the subscribers to the memorandum are foreigners, resident abroad, and though the principal object of the company is the transaction of business abroad (*p*). A company formed and registered in India, and having a branch office in this country, but not registered here, has been wound up (*q*). It seems that if a company merely contemplate carrying on business in England, it may be registered, and therefore wound up, though it has never carried on business here, and though all its shareholders are foreigners (*r*); but the Court has declined to make an order where the company never intended to carry on business in England, and where there did not exist in this country the means of doing substantial justice (*s*).

Scrip companies have been ordered to be wound up under the old Acts, and may, it seems, be wound up under the Act of 1862 (*t*).

Companies formed on the cost-book principle for working mines within the jurisdiction of the stannaries may be wound up (*u*).

(*n*) *Royal Victoria Syndicate*, 30 L. T. N. S. 3; and see *South of France Syndicate*, 36 L. T. N. S. 651.

(*o*) *Adansonie Fibre Co.*, L. R. 9 Ch. 637, n.

(*p*) *Land Credit Co.*, L. R. 5 Ch. 363; *Princess of Reuss v. Bos*, L. R. 5 H. L. 176; *Madrid Rly.*, 2 Mac. & G. 169.

(*q*) *Commercial Bank of India*, L. R. 6 Eq. 517.

(*r*) *Princess of Reuss v. Bos*, L. R. 5 H. L. 176; but see *Bulkeley v. Schutz*, L. R. 3 P. C. 764.

(*s*) *Union Bank of Calcutta*, 3 De G. & S. 253.

(*t*) *Lindley*, 1230.

(*u*) *Ib.*

Industrial  
society.

Societies registered, or deemed to be registered, under the Industrial and Provident Societies Act, 1876, may be dissolved by an order to wind up, and the provisions of the Companies' Act, 1862, are to apply, except that the Court having jurisdiction is to be the County Court (*v*).

Building  
society.

Building societies may be wound up by the County Court on a petition by a member, authorized by three-fourths of the members present at a meeting, or by a judgment creditor for not less than £50 (*w*).

Loan society.

A loan society was held to be within the Winding-up Act, 1849 (*x*); and such a society may, it seems, be wound up as an unregistered company under the Act of 1862 (*y*). Where such a society consisted, at the time of the application, of only four members, a winding-up order was refused, although the society originally consisted of more than seven members (*z*).

Mutual society.

It seems somewhat doubtful whether purely mutual societies can properly be made the subject of a winding-up order (*a*); though several such orders have been made (*b*).

Clubs.

Clubs are not associations within the Act, and cannot therefore be wound up (*c*); nor are literary, scientific, or charitable societies (*d*).

Life assurance  
companies.

In the case of life assurance companies, the Court will make a winding-up order on the petition of a policy holder or shareholder where the company is shown to be

(*v*) 39 & 40 Vic. c. 45, s. 17.  
As to Friendly Societies, see 38 & 39 Vic. c. 60.

(*w*) 37 & 38 Vic. c. 42, ss. 4, 32.

(*x*) *Exp. Smith*, 1 Sim. (N. S.), 165.

(*y*) *Bolton Loan Society*, 12 Ch. D. 679.

(*z*) *Ibid.*

(*a*) *Merchants' Assurance Soc.*, L. R. 9 Eq. 694; and see Buckley,

350.

(*b*) *Shields Marine Ass.*, L. R. 5 Eq. 368; *London Marine Ass.*, L. R. 8 Eq. 176, 185; *Albert Average Ass.*, L. R. 5 Ch. 597; and see *Hargrove & Co.*, L. R. 10 Ch. 542.

(*c*) *St. James' Club*, 2 D. M. & G. 383.

(*d*) Lindley, 1231. As to what is an association, see *Hargrove & Co.*, L. R. 10 Ch. 542.

insolvent. In determining whether a life assurance company is insolvent, the Court will take into account its contingent or prospective liability under policies, or annuity, and other existing contracts; but the petition will not be heard until security for costs has been given, and until a *prima facie* case has been established to the satisfaction of the Judge. In the case of a proprietary company having an uncalled capital of an amount sufficient, with the future premiums receivable by the company, to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time to enable the uncalled capital, or a sufficient part thereof, to be called up; and if at the end of the original, or any extended time for which the proceedings shall have been suspended, such an amount shall not have been realised by means of calls as, with the already invested assets, shall be equal to the liabilities, an order shall be made on the petition, as if the company had been proved insolvent (*e*).

A petition presented under the above section must be entitled in the matter of the Life Assurance Companies Act, 1870 (*f*); and will be marked with a special fiat. The matter will then go into chambers, and be there heard *ex parte*. Upon the result of the proceedings in chambers, the petition will be answered for hearing in the usual way (*g*).

Where, however, the company is being wound up voluntarily, it is unnecessary that a *prima facie* case should be stated, or that security for costs should be given (*h*).

(*e*) Life Assurance Companies Act, 1870, s. 21. As to winding up amalgamated companies, see s. 4. As to winding up for non-compliance with Act, see s. 18.

(*f*) *British Alliance Corp.*, W. N. (1877), 261.

(*g*) Buckley, 550, 551.

(*h*) *British Alliance Corp.*, 9 Ch. D. 635.

Policy holders, who are entitled to deposit their policies and to receive the cash value thereof, cannot, by depositing their policies, petition as creditors (*i*).

The Court will not suspend proceedings under the petition on the ground that there is nominally uncalled capital exceeding the liabilities, if it appears that a call would not produce any appreciable amount (*j*).

### *Who may Petition.*

**Creditor.** A creditor may petition though his debt is secured (*k*), and though it is under £50 ; but if it is less than £50, he must show his right to a winding-up order otherwise than by non-payment of his debt after the statutory demand (*l*). The debt must not be of an uncertain nature (*m*), and must not be *bond fide* disputed by the company (*n*). A claim for unliquidated damages will not support a petition (*o*).

**Assignee.** The assignee of a debt may petition (*p*) ; but a creditor cannot, after presenting a petition, sell his debt and the right to proceed with the petition (*q*).

**Bondholder.** Where a company issued "mortgage bonds" under the provisions of a trust deed, by which deed the company covenanted with the trustees that all the bonds should rank *pari passu*, and that every bond should entitle the holder to a fully paid-up ordinary share, as a bonus share, and that the company would pay to the trustees interest on the bonds, and also an annual sum by way of

(*i*) *British Imperial Ass. Co.*, W. N. (1875), 184.

(*j*) *National Funds Ass. Co.*, W. N. (1876), 239. For tests of insolvency of assurance companies with uncalled capital, see *London & Manchester Association*, 1 Ch. D. 466 ; and Buckley, 551.

(*k*) *Moor v. Anglo-Italian Bank*, 10 Ch. D. 681. As to petitions by creditors, see *ante*, pp. 155, 156.

(*l*) Buckley, 117.

(*m*) *European Banking Co.*, L. R. 2 Eq. 521.

(*n*) *Ante*, p. 155.

(*o*) *Pen-y-Van Co.*, 6 Ch. D. 477.

(*p*) *London Alkali Co.*, 1 D. F. & J. 257 ; *Paris Skating Rink*, 5 Ch. D. 959.

(*q*) *Paris Skating Rink*, *supra*.



sinking fund for the discharge of the bonds, and that the bond debt, interest, and sinking fund, should be a charge upon the property; and each bond contained a covenant by the company with the trustees for payment to bearer of principal and interest; it was held that the holder of such bonds was not a creditor, and could not present a petition (r).

A company incorporated by Act of Parliament for public purposes will not be wound up on the petition of debenture holders, who will be left to the remedy which the Act gives them, namely, the appointment of a receiver (s).

A shareholder cannot present a petition, unless the members of the company are reduced to less than seven, or unless his shares were originally allotted to him, or have been held by him for six months during the eighteen months previously to the winding-up, or have devolved upon him through the death of a former owner (t).

A fully paid-up shareholder who presents a petition must allege and prove that there are assets of such an amount that in the event of a winding-up he will have a tangible share of surplus to receive (u); and if the company is in voluntary liquidation, he will not be entitled to a compulsory or supervision order, except in a case of fraud, or where creditors support the petition (v).

A petition by a shareholder in arrear in the payment of calls due from him, will generally be dismissed (w), unless he has tendered the amount due (x).

(r) *Uruguay Rly. Co.*, 11 Ch. D. 373.

(s) *Herne Bay Waterworks Co.*, 10 Ch. D. 42; *Exmouth Docks Co.*, L. R. 17 Eq. 181; *ante*, p. 161.

(t) Companies Act, 1867, s. 40. See *City & County Bank*, L. R. 10 Ch. 470.

(u) *Rica Gold Co.*, 11 Ch. D. 36.

(v) *Gold Co.*, 11 Ch. D. 701.

(w) *European Life Assurance Soc.*, L. R. 10 Eq. 403; *Petersburgh Gas Co.*, 33 L. T. N. S. 637; *Diamond Fuel Co.*, W. N. (1878), 11; but see *General Exchange Bank*, L. R. 4 Eq. 138.

(x) *Steam Stoker Co.*, L. R. 19 Eq. 416; *Diamond Fuel Co.*, W. N. (1878), 228.

Debenture holder.

Contributory.

Shareholder :  
paid-up.

Shareholder in  
arrear.

Share warrant. *Quære*, whether the holder of a share warrant who is not an original allottee can petition (*y*).

Executors. Where by the deed of settlement of a company it was provided that executors should not be proprietors, it was held that they were nevertheless contributories, and might present a petition (*z*).

B. contributory. It seems that a past member, liable as a B. contributory, may petition (*a*).

Scrip. A winding-up order has been made on the petition of a transferee of scrip certificates, which were transferable by delivery, and which entitled the holder to become a shareholder, and in the meantime to receive dividends, the petitioner admitting himself to be a contributory, and undertaking to do all acts necessary to make himself a shareholder (*b*).

*De jure* shareholders. A petition may be presented by *de jure* shareholders where by default of the company they are not shareholders *de facto*. Thus, a petition may be presented by persons who have obtained a decree ordering the company to allot them shares and to register them as shareholders, though their names are not registered at the time of the presentation of the petition (*c*).

### *Advertisements.*

Title of petition and advertisements. Every petition presented for the winding up of any company by the Court, or subject to the supervision of the Court, and all notices, affidavits, and other proceedings under such petition, must be intituled "In the matter of

(*y*) Buckley, 177.

(*z*) *Norwich Yarn Co.*, 12 Beav. 366.

(*a*) Buckley, 178.

(*b*) *Littlehampton Steamship Co.*,

2 D. J. & S. 521; and see *exp. Capper*, 3 De G. & S. 1.

(*c*) *Patent Steam Engine Co.*, 8 Ch. D. 464.

The Companies Acts, 1862 and 1867" (*d*), and of the particular company, describing it by its usual style or firm (*e*).

Where the advertisements had been intituled "In the matter of The Companies Act, 1862," only, the petition was ordered to stand over, with liberty to issue fresh advertisements (*f*).

Every winding-up petition shall be advertised seven clear days before the hearing, as follows :—

- (1.) In the case of a company whose registered office, <sup>Advertisement of petition.</sup> or, if there shall be no such office, then whose principal or last known place of business is or was situate within ten miles from Lincoln's Inn Hall, once in the *London Gazette*, and once at least in two London daily morning newspapers.
- (2.) In the case of any other company, once in the *London Gazette*, and once at least in two local newspapers circulating in the district where such registered office, or principal or last known principal place of business, as the case may be, of such company is or was situate.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any) (*g*).

The seven days may be counted in the vacation (*h*).

(*d*) Gen. Ord. March, 1868, r. 1. (1877), 261.

(*e*) Gen. Ord. Nov. 1862, r. 1. (*f*) *Re Marezzo Co.*, W. N.

If the petition is by a policy holder (1874), 9.

or shareholder of an assurance company, it must be entitled in the Life (*g*) Gen. Ord. Nov. 1862, r. 2.

Assurance Companies Act, 1870 ; (*h*) *Re London India-Rubber Co.*,

*British Alliance Corp.*, W. N. 14 W. R. 594.

The advertisements may, it seems, appear on the morning of the day on which the petition is presented (*i*).

Re-advertisement.

When the advertisements have not been properly inserted, the usual practice is for the petition to stand over, with liberty to issue fresh advertisements (*j*).

The advertisements must be headed "In the matter of The Companies Acts, 1862 and 1867." An advertisement headed "In the matter of The Companies Act, 1862," only was held insufficient (*k*).

The registered name of the company must be accurately stated. A slight error in the name will render the advertisement absolutely void (*l*).

Where the petition had been advertised to be heard "on Saturday the 20th," the 20th being a Thursday, the Court refused, even by consent, to waive the irregularity (*m*).

Dispensing with re-advertisement.

The Court has, however, power to dispense with the issue of fresh advertisements, though it will not exercise such power lightly. When the advertisements have not been properly inserted, owing to an accident, the Court will exercise such power if the advertisements have had the effect of securing the representation of every class of persons interested before the Court (*n*). Where advertisements had been properly inserted in two daily papers, but the advertisement in the *Gazette* had only appeared six clear days before the hearing, the objection was overruled (*o*); and where the petition had been properly adver-

(*i*) *Re Cork & Youghal Rly. Co.*,  
14 L. T. N. S. 750.

(*j*) *London & Westminster Wine  
Co.*, 1 H. & M. 561; *Marezzo  
Marble Co.*, 22 W. R. 248.

(*k*) *Re Marezzo Marble Co.*,  
*supra*.

(*l*) *Re City & County Bank*, L. R.

10 Ch. 470, 477.

(*m*) *Re Joint Stock, &c.*, 13 Beav.  
434.

(*n*) *Re City & County Bank*, L.  
R. 10 Ch. 470, 477.

(*o*) *Re Land & Sea Telegraph Co.*,  
W. N. (1870), 213; 18 W. R.  
1150.

tised in the *Gazette*, but the advertisements in the other two papers had not been in accordance with the requirements of the Order, the advertisements were held sufficient (*p*). But where the petition had been advertised in only one other paper besides the *Gazette*, the Court directed the petition to be properly advertised, and the order to be drawn up seven days after the advertisement (*q*).

A petition might formerly be reheard without fresh advertisements, on service and consent of all parties entitled to be served (*r*); and an application to rectify a slip in former proceedings, being properly an *ex parte* matter, does not require advertisement (*s*).

But where a petition, which has been presented and advertised, is subsequently withdrawn, the withdrawal should be advertised (*t*). Withdrawal.

The priority of petitions is determined by the date of advertisement, and not by the date of presentation (*u*); and where the advertisements of both petitions appear in the same number of the *Gazette*, the petitioner whose petition was presented first is entitled to the carriage of the order (*x*).

A second petition presented after the advertisement of a prior petition will generally be dismissed with costs (*y*).

Advertisement of a petition is notice to all the world of

(*p*), *Worthing Hotel Co.*, W. N. (1872), 74.

(*q*) *London India-Rubber Co.*, 14 W. R. 527, 594.

(*r*) *Re Patent Floor Cloth Co.*, L. R. 8 Eq. 664; but see now *St. Nazaire Co.*, 12 Ch. D. 88.

(*s*) *Re Shields Marine Insurance Co.*, W. N. (1867), 296.

(*t*) *Re Humber Ironworks Co.*, L. R. 2 Eq. 15; *re United Service*

*Co.*, L. R. 7 Eq. 76. As to withdrawal, see *post*, p. 177.

(*u*) *Re United Ports, &c. Co.*, 39 L. J. (Ch.) 146; *re Trades Bank*, W. N. (1877), 268.

(*x*) *Re Storrorth Lane Colliery Co.*, 10 Ch. D. 487.

(*y*) *Re Joint Stock Coal Co.*, L. R. 8 Eq. 146; *re Accidental & Marine Ins. Co.*, 36 L. J. Ch. 75.

its presentation (z). It is a substitute for actual service, and is notice to all persons interested to appear on the hearing (a).

The publication of a petition *in extenso* before the hearing is a contempt of Court (b).

### *Service.*

Service at registered office.

Every winding-up petition shall, unless presented by the company, be served at the registered office, if any, of the company, and if no registered office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer, or servant of the company there; or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the Court may direct; and every petition for the winding-up of a company subject to the supervision of the Court shall also be served upon the liquidator (if any) appointed for the purpose of winding-up the affairs of the company (c).

Rule not imperative.

This rule is not imperative, but merely directory. Where, therefore, service of the petition had been accepted on behalf of the company by a solicitor duly appointed for that purpose, service at the company's office was held to be unnecessary (d).

Office pulled down.

Where the registered office had been demolished, service on the secretary and two of the directors at the unregis-

(z) *Emmerson's Case*, L. R. 2 Eq. 231; but see *post*, p. 181.

(a) *Marlborough Club Co.*, L. R. 1 Eq. 216; *New Gas Co.*, 5 Ch. D. 703.

(b) *Cheltenham, &c., Carriage*

*Co.*, L. R. 8 Eq. 580; *General Exchange Bank*, 14 L. T. N. S. 582; and see Buckley, 472.

(c) Gen. Ord. Nov. 1862, r. 3.

(d) *Regent United Service Stores*, 8 Ch. D. 75.

tered office was held sufficient (*e*); and in another case, where the office had been pulled down, and there was a notice that the company had removed to No. 13 in the same street, but the name of the company was not written up there, and the petitioner's solicitor was informed that the secretary attended at the office of the company's solicitors at that address, service was directed on the secretary at that address, and on one of the firm of the company's solicitors (*f*). But service on a workman employed on the site where the office had once stood was held insufficient, although two of the directors appeared (*g*).

Where the registered office has been closed, service has Office closed. been directed in the following modes; namely, on the chairman and general manager only (*h*); on any five of the directors (*i*); and on the solicitor and any one of the directors in addition to service by leaving the petition in the letter-box of the late office (*k*).

Where there was no office and no known officer of the No office. company, service was directed at the office of the company's solicitors, and upon one of the directors (*l*). But under the Act of 1848 it was held that a solicitor was not an officer or servant of the company, and that service upon him was therefore insufficient (*m*).

Where there has been no office, service has been directed on all the surviving subscribers to the memorandum, and on three or four of the principal shareholders (*n*); and in

- |                                                                            |                                                                      |
|----------------------------------------------------------------------------|----------------------------------------------------------------------|
| ( <i>e</i> ) <i>Fortune Copper Mining Co.</i> ,<br>L. R. 10 Eq. 390.       | W. R. 355.                                                           |
| ( <i>f</i> ) <i>Vron Slate Co.</i> , W. N. (1878),<br>70.                  | ( <i>k</i> ) <i>London &amp; Westminster Wine Co.</i> , 12 W. R. 6.  |
| ( <i>g</i> ) <i>Manchester, &amp;c., Association</i> ,<br>L. R. 9 Eq. 643. | ( <i>l</i> ) <i>South Essex Estuary Co.</i> , 18<br>L. T. N. S. 178. |
| ( <i>h</i> ) <i>National Credit and Exchange Co.</i> , 11 W. R. 161.       | ( <i>m</i> ) <i>Trent Valley Rly. Co.</i> , 3 De<br>G. & S. 11.      |
| ( <i>i</i> ) <i>Unity General Ass. Ass.</i> , 11                           | ( <i>n</i> ) <i>Inventors' Association</i> , 13 W.<br>R. 1015.       |

another case, where no list of shareholders had been filed, on the seven subscribers to the memorandum only (*o*). In the case of a mutual company which had no place of business and no directors, service was directed on the secretary and agents of the company, the latter refusing to say who were the members of the company (*p*). But where an unregistered company had ceased to carry on business, service at the office which had been, but which was no longer, the office of the company was held sufficient (*q*).

Amalgamated  
company

Where a company had been amalgamated with another, leave was given to serve some of the members of the company at the time of amalgamation (*r*); and where a company had transferred its business to another, service was directed upon any five of the directors (*s*).

Where an order had been made on the petition of the liquidator and some of the directors, and the registrar refused to draw up the order on the ground that no service had been effected, the Court directed the order to be passed, on production to the registrar of a consent brief for the other directors and two or three of the principal shareholders (*t*).

Unregistered  
company.

An unregistered company may be served at its office, and it is not necessary to serve the individual shareholders of such a company (*u*).

Service on  
liquidator.

A petition for winding-up subject to supervision must be served, not only on the liquidator, but also on the

(*o*) *Cwmsymlog Co.*, 16 W. R. 270; *Velletri & Terracina Co.*, 18 L. T. N. S. 350.

(*p*) *Thames Mutual Co.*, 15 L. T. N. S. 263.

(*q*) *City of London Ass.*, 36 L. J. (Ch.) 832.

(*r*) *Coghlan's Case*, L. T. (Eur.

Arb.), 31, 37.

(*s*) *Unity General Ass. Ass.*, 11 W. R. 355; and see *Manchester, &c., Ass.*, L. R. 9 Eq. 643.

(*t*) *Pannonia Leather Cloth Co.*, 13 W. R. 1015, n.

(*u*) *City of London Ass.*, 36 L. J. (Ch.) 832.



company (*x*). Service has been directed on the late secretary of the company, as well as on the liquidator (*y*), and where the liquidator and some of the directors join in the petition, it seems that the other directors and two or three of the principal shareholders should be served (*z*).

"The Order, probably by an oversight, fails to provide for the service of a petition for a compulsory order on the liquidator acting in a voluntary winding-up, or in a winding-up under supervision ; but such service, no doubt, ought to be made" (*a*).<sup>4</sup>

### *Evidence.*

Every petition for the winding-up of any company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit in the form or to the effect set forth in the General Order, November, 1862, Schedule III., Form 2 (*b*). Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one ; or, in case the petition is presented by the company, by some director, secretary, or other principal officer thereof, and shall be sworn after, and filed within four days after, the petition is presented ; and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition (*c*).

Where the affidavit was inadvertently sworn and filed before the petition was presented, the Court allowed it to be re-sworn, and the order on the petition to be post-dated (*d*).

(*x*) *Inventors' Association*, 13 W. R. 1015 ; *Petroleum Co.*, 15 W. R. 29.

(*y*) *Petroleum Co.*, 15 W. R. 29.

(*z*) *Pannonia Leather Cloth Co.*, 13 W. R. 1015, n.

(*a*) Buckley, 473.

(*b*) For form, see *post*.

(*c*) Gen. Ord. Nov. 1862, r. 4.

(*d*) *Western Benefit Building Soc.*, 33 Beav. 363.

Affidavit verifying petition.

Sworn before petition presented.

Extending time  
for filing affi-  
davit.

The time for filing the affidavit may be enlarged (*e*). Thus, leave has been given to file an affidavit seven days after the petition was presented (*f*); and winding-up orders have been made, though the affidavit was not filed till the fifth day (*g*); and in one case, until nine days after the presentation of the petition (*h*).

Where the petitioner was resident in Dantzic, the Court extended the time to ten days (*i*); and where the petition was presented under a power of attorney executed by petitioners resident in Australia to a solicitor in this country, the Court, instead of enlarging the time, allowed the solicitor to make the affidavit (*k*); and where the petitioner was resident at the Cape, the Court allowed the affidavit to be made by some person acquainted with the facts (*l*).

Must be made  
by petitioner.

It would seem that the affidavit can only be made by the petitioner. Where, therefore, the petition is presented by a company other than the liquidating company, the affidavit cannot be made by the secretary or other officer of the petitioning company (*m*).

It seems that the affidavit is not in all cases necessarily sufficient, and that the Court may require further evidence in support of the petition (*n*).

Copies of peti-  
tion.

Every contributory or creditor is entitled to be furnished, by the solicitor to the petitioner, with a copy of the petition, within twenty-four hours after requiring the

(*e*) Gen. Ord. Nov. 1862, r. 73.

(*f*) *Patent Screwed Boot & Shoe Co.*, 32 Beav. 142.

(*g*) *London & Westminster, &c.*, Co., 17 L. T. N. S. 559; *East Cambrian Gold Mining Co.*, 12 L. T. N. S. 587.

(*h*) *Kentish Royal Hotel Co.*, 13 W. R. 448.

(*i*) *Anglo-Danish, &c., Co.*, 15

W. R. 105.

(*k*) *Fortune Copper Mining Co.*, L. R. 10 Eq. 390.

(*l*) *Everton Building Soc.*, W. N. (1871), 242.

(*m*) *Bank of Montreal v. Cameron*, 2 Q. B. D. 536; but see *Fortune Copper Mining Co.*, *supra*.

(*n*) *St. David's Mining Co.*, 14 W. R. 755.

same, on paying at the rate of fourpence per folio of seventy-two words for such copy (o).

*Withdrawal—Amendment—Demurrer.*

A creditor who has presented and advertised a petition is not bound to bring it to a hearing. He may dismiss it, or agree with the company for its withdrawal (p). But he will not be allowed to take his petition out of the list, so as not to appear in the Court paper on the day for which it is answered, even though he undertake to pay the costs of any creditor who may present himself (q). If he elect to dismiss his petition, he must provide for the costs of any creditor or contributory appearing to oppose (r), even though they have notice that the petitioning creditor has been paid, and that the petition will be dismissed (s); and, *quære*, whether he will not also have to provide for the costs of parties appearing to support the petition (t).

Where, therefore, the company wishes to get rid of a petition, it must not only pay the petitioner's debt and costs, but must also indemnify him against the costs of creditors and shareholders appearing (u); and if the company pay the debt without providing for costs, the creditor is entitled to bring on his petition in order to get them (x).

Where the case of a petitioning shareholder fails, the

(o) Gen. Ord. Nov. 1862, r. 5; *Cheltenham Carriage Co.*, L. R. 8 Eq. 580, 583.

(p) *Times Life, &c., Co.*, L. R. 9 Eq. 382; *Home Assurance Ass.*, L. R. 12 Eq. 59.

(q) *An Insurance Co.*, 33 L. T. N. S. 49; *Mid-Wales Hotel Co.*, 17 L. T. N. S. 597.

(r) *Patent Cocoa Fibre Co.*, 1 Ch.

D. 617; *New Gas Co.*, 5 Ch. D. 703; and see *pos*, p. 185.

(s) *Hereford, &c., Co.*, L. R. 17 Eq. 423.

(t) Buckley, 179.

(u) *Ibid*.

(x) *Flagstaff Co.*, L. R. 20 Eq. 268; *Railway Finance Co.*, 14 W. R. 785.

Court will not make an order at the instance of a creditor who appears in support of the petition (*y*). But where a member of a benefit building society petitioned as a creditor, he was allowed to amend his petition by stating that he was a creditor only in respect of money advanced by him as a member (*z*).

In several recent cases, leave has been given to amend a "demurrable" petition (*a*).

Demurrer.

An order will be refused if a sufficient case is not stated on the petition. It is not enough that a sufficient case is shown in evidence (*b*). Where a sufficient case is not alleged, the petition, according to the expression now commonly used, is "demurrable" (*c*). Where a petition is dismissed as being demurrable, the costs of the respondent's evidence will not be allowed (*d*). Leave may be given to amend a demurrable petition (*e*).

Upon demurrer to a petition, the counsel for the petitioner must open the case (*f*).

A petition by a shareholder is not demurrable on the ground that it contains no allegation that he has held his shares for the requisite six months (*g*).

Allegation of fraud.

A vague allegation of fraud is not sufficient, but the facts which constitute the fraud must be stated; and if

(*y*) *Spence's Co.*, L. R. 9 Eq. 9; and see *Home Ass.*, L. R. 12 Eq. 59.

(*z*) *Queen's Building Soc.*, L. R. 6 Ch. 815.

(*a*) *Buckley*, 181; and see *British Alliance Corporation*, 9 Ch. D. 635, 642.

(*b*) *Wear Co.*, L. R. 10 Ch. 188; *Sir John Moore Co.*, W. N. (1877) 183; and see *British Alliance Corp.*, 9 Ch. D. 635; but see *City & County Bank*, *infra*.

(*c*) *Steam Stoker Co.*, L. R. 19

Eq. 416; *Wear Engine Co.*, L. R. 10 Ch. 188; *New Gas Co.*, 36 L. T. N. S. 364; 37 *ibid.*, 111; *Petersburg Gas Co.*, 33 *ibid.*, 637.

(*d*) *Steam Stoker Co.*, *supra*; *Star and Garter Co.*, 28 L. T. N. S. 258; *Herne Bay Waterworks Co.*, W. N. (1878), 199.

(*e*) *Re British Alliance Corporation*, 9 Ch. D. 635, 642.

(*f*) *Re British Alliance Corporation*, *supra*.

(*g*) *City & County Bank*, L. R. 10 Ch. 470.

there is only a vague general allegation, evidence of the acts of fraud is not admissible (*h*).

### *Hearing—Order.*

Upon the hearing of the petition the Court may dis- Hearing.  
miss the same, with or without costs, or may adjourn the hearing, conditionally or unconditionally, or may make an interim order, or any other order that it deems just (*i*).

The general practice is to treat all winding-up peti- Unopposed.  
tions as opposed. But this rule has not been adhered to in the Courts of Malins, V.-C., and Bacon, V.-C., where the company appears and consents, and no one opposes the petition (*k*).

A petition will not as a general rule be adjourned or Adjournment.  
ordered to stand over; because the order, if ultimately made, will relate back to the presentation of the petition, and affect acts donè in the interval (*l*). But the Court is not bound to make an immediate order even on the petition of a creditor (*m*); and, therefore, where there is a reasonable hope that the company will be able to make arrangements for the payment of its debts (*n*), or where there are no assets, and consequently there is no chance of the creditor getting paid by means of a winding-up order (*o*), the petition will be ordered to stand over.

Where the petitioner's debt is disputed, the Court will, in a proper case, order the petition to stand over until the debt has been established at law (*p*).

(*h*) *Rica Gold Co.*, 11 Ch. D. 36.

(*i*) Companies Act, 1862, s. 86.

(*k*) *Bedwas Coal Co.*, W. N. (1874), 17.

(*l*) *Metropolitan Warehousing Co.*, 15 W. R. 1121; *Metropolitan Omnibus Co.*, 28 L. J. (Ch.) 830; *Albion Bank*, 15 L. T. N. S. 346.

(*m*) *Western Canada Oil Co.*, L. R. 17 Eq. 1.

(*n*) *Brighton Hotel Co.*, L. R. 6 Eq. 339.

(*o*) *St. Thomas' Dock Co.*, 2 Ch. D. 116; where an undertaking by the company was required.

(*p*) Buckley, 168. The Court

Who may be heard.

The only persons entitled to be heard upon the petition are the company, its contributories and creditors; and although the Court may reasonably hear other persons, who have an interest in the property of the company, as *amici curiæ*; yet such persons cannot appeal against the decision (*q*). The Appeal Court refuses to hear creditors or contributories appearing to support an appeal (*r*); although creditors are allowed to appear and oppose a petitioner's appeal; and, if successful, will get their costs (*s*).

Order.

Every order for the winding-up of a company by the Court, or subject to its supervision, must, within twelve days after the date thereof, be advertised by the petitioner once in the *London Gazette*; and must be served upon such persons (if any) and in such manner as the Court shall direct (*t*).

Where, through delay in drawing up the order, the advertisement has not been inserted within the twelve days, leave has been given to post-date the order (*u*). The application for such leave must be made in the presence of all parties (*x*).

A copy of every order for winding-up a company, certified to be a true copy thereof as passed and entered, must be left by the petitioner at the chambers of the Judge within ten days after the same shall have been passed and entered; and, in default thereof, any other person interested in the winding-up may leave the same,

has sometimes decided the question itself; and, *quære*, whether under the present practice it will not always or generally do so.

(*q*) *Bradford Navigation Co.*, L. R. 5 Ch. 600.

(*r*) Buckley, 198.

(*s*) *New Gas Co.*, 5 Ch. D. 703.

(*t*) Gen. Ord. Nov. 1862, r. 6.

(*u*) *Warland Commercial Co.*, W. N. (1876), 279; *Doncaster Building Society*, 11 W. R. 459; *East Cambrian Mining Co.*, 12 L. T. N. S. 587.

(*x*) *Disderi & Co.*, 18 L. T. N. S. 870.

and the Judge may, if he thinks fit, give the carriage and prosecution of the order to such person. Upon such copy being left, a summons is taken out to proceed with the winding-up (*y*).

### *Several Petitions.*

A creditor who presents a petition after notice that a prior petition has been presented by another creditor for the same object, does so at the risk of having his petition dismissed with costs (*z*). The mere fact that the first petition has been advertised is not necessarily notice, unless, *semble*, sufficient time has elapsed to assume knowledge of the advertisement on the part of the second petitioner (*a*). But where the second petitioner has no notice, or where the first petition is collusive (*b*), and collusion is proved (*c*), the practice is to make one order on both petitions, and then the usual rules as to costs apply (*d*). But in a recent case (*e*), Jessel, M. R., states the rule to be that if it turns out that the first petition was not *bonâ fide*, but merely for the purpose of protecting the company against its creditors, it is a matter of course that it will be dismissed with costs, and an order made on the second. From the same case it appears that where collusion is suspected it is the duty of a second petitioner before presenting his petition to ask the first petitioner if he is going to take a compulsory order, and to say that unless

Several petitions.

(*y*) Gen. Ord. Nov. 1862, r. 7.  
 (*z*) *Accidental & Marine Co.*, 36 L. J. (Ch.) 75; *Joint Stock Coal Co.*, L. R. 8 Eq. 146; but see *European Banking Co.*, L. R. 2 Eq. 521.

(*a*) *Empire Assurance Corp.*, 16 L. T. N. S. 341; *National Bank*, L. T. (Eur. Arb.) 92; *Owen's Wheel Co.*, 22 W. R. 151; *Marron*

*Co.*, W. N. (1878) 12; *British & Foreign Gas Co.*, 13 W. R. 649.

(*b*) *United Service Co.*, L. R. 7 Eq. 76; *Commercial Discount Co.*, 32 Beav. 198.

(*c*) *Norton Iron Co.*, W. N. (1877), 223; 47 L. J. (Ch.) 9.

(*d*) Buckley, 200.

(*e*) *Norton Iron Co.*, *supra*.

he receives an affirmative reply within three days, he (the second petitioner) will present a petition. Any creditor can insist upon the petitioners either taking an order on their petition or having it dismissed with costs (*f*). The settled practice is to consider as collusive such petitions as are presented for the purpose of protecting the company against other creditors (*g*).

Where there were two petitions, one for a supervision order, and one for a compulsory order, the Court, in order that the winding-up might commence from the resolution to wind-up voluntarily, made a supervision order on the first, and a compulsory order dated the following day on the second petition (*h*); and where there were two petitions, one by a paid-up shareholder, the other by shareholders who had only paid the deposit, one order was made on both petitions, and the conduct of the winding-up given to the paid-up shareholder (*i*).

Transfer.

Where a second petition has been presented in another branch of the Court, it will be ordered to be transferred to that branch to which the first petition is attached (*k*).

Where an order has been made in one branch of the Court, a petition pending in another branch must be transferred to the Court in which the order was made, and must be brought on for hearing there (*l*). When an order is made in one branch, a petitioner whose petition is pending elsewhere may, by appearing when the order is made, succeed in procuring the order to be made on both petitions, on his undertaking to transfer his petition to that branch;

(*f*) *Norton Iron Co.*, *supra*; and see *Berlin Abattoir Co.*, 19 W. R. 793.

(*g*) *Norton Iron Co.*, *supra*.

(*h*) *United Service Co.*, L. R. 7 Eq. 76.

(*i*) *Constantinople Hotels Co.*, 13

W. R. 851; and see *Berlin Abattoir Co.*, 19 W. R. 793.

(*k*) *West Hartlepool Co.*, L. R. 10 Ch. 629.

(*l*) *British & Foreign Gas Co.*, 13 W. R. 649; *Marron Co.*, W. N. (1878), 12.



but this can only be done by consent (*m*). Where a petition had been presented, but the petitioner had failed to prosecute the petition, an order was made in the interim on another petition, in another branch of the Court (*n*).

### *Costs.*

The general rule as to costs of winding-up petitions has General rule. been thus clearly stated. The Court gives costs to the petitioner if the petition succeeds, and to the company if it fails, and further gives one set of costs to the contributories, and one to the creditors, who support the winning side. If the petition succeeds, these costs are given out of the company's estate; if it fails, they are given against the petitioner (*o*).

Contributories and creditors, being invited to appear by the advertisements, are entitled to their costs in accordance with the above rule, irrespective of service (*p*).

The general rule that creditors are entitled to only one set of costs applies whether the petition is by a shareholder or a creditor (*q*).

But creditors are not entitled to their costs as of right. Where, therefore, there is no reasonable ground for their appearance, and they appear merely to ask for costs, such costs will be refused (*r*).

The Court will discourage the practice of instructing

(*m*) Buckley, 200.

(*n*) *Consolidated Bank*, 14 L. T. N. S. 656.

(*o*) Buckley, 197. *Humber Iron-works Co.*, L. R. 2 Eq. 15; *European Banking Co.*, *ibid.*, 521; *Oriental Commercial Bank*, W. N. (1866), 283; *Diamond Fuel Co.*, W. N. (1878), 11.

(*p*) *New Gas Co.*, 5 Ch. D. 703;

but see *Hull & County Bank*, *infra*; *Horbury Bridge Coal Co.*, W. N. (1879), 51.

(*q*) *New Gas Co.*, 5 Ch. D. 703; *Carnarvonshire Slate Co.*, 40 L. T. N. S. 35.

(*r*) *Hull & County Bank*, 10 Ch. D. 130; *Military & General Tailoring Co.*, 47 L. J. (Ch.) 141.

counsel to appear merely for the purpose of getting costs (*s*).

The above rules, however, are merely general rules; and in considering the question of costs the Court will be guided by the particular facts of each case (*t*). So, more than one set of costs have been allowed to shareholders (*u*); and costs have been given to opposing shareholders in addition to the company (*x*); and where some of the creditors and shareholders joined in the petition, the costs of others appearing separately were disallowed (*y*); and the costs of shareholders were refused where the petition did not affect their interests (*z*); and the costs of both creditors and contributories were disallowed where the petition was unopposed, and there had been no reasonable assurance of opposition, and the same solicitor acted for all parties (*a*).

The petitioner must pay the costs of every person against whom a personal charge is made in the petition, and who appears and disproves such charge, and is otherwise free from blame (*b*).

Provisional  
liquidator.

A provisional liquidator is not, although served, entitled to appear at the hearing, and his costs will be refused (*c*).

Secured cre-  
ditor.

Secured creditors are entitled to appear and share in the set of costs given to creditors, without electing whether they will give up or retain their security (*d*).

(*s*) See last note.

(*t*) *Albion Bank*, *infra*; *Anglo-Egyptian Navigation Co.*, *infra*.

(*u*) *Albion Bank*, 15 W. R. 148.

(*x*) *Anglo-Egyptian Navigation Co.*, L. R. 8 Eq. 660.

(*y*) *City Glass Co.*, W. N. (1874), 116.

(*z*) *Star & Garter Hotel Co.*, 28 L. T. N. S. 258.

(*a*) *Military & General Tailoring*

*Co.*, 47 L. J. (Ch.) 141.

(*b*) *Humber Ironworks Co.*, L. R. 2 Eq. 15.

(*c*) *General International Co.*, 36 Beav. 1; but see *Times Life Ass.*, L. R. 9 Eq. 382; *European Banking Co.*, L. R. 2 Eq. 521.

(*d*) *Carmarthenshire, &c., Iron Co.*, 45 L. J. (Ch.) 200; and see *Moor v. Anglo-Italian Bank*, 10 Ch. D. 681.

As a general rule, a petitioner who withdraws his petition must pay the costs of persons appearing in consequence of the advertisements (*e*). But where a petitioning creditor's debt was paid by the company, and he withdrew his petition, he was held entitled to his costs (*f*). If after an offer to satisfy his debt and costs, a creditor proceeds with his petition, he will not be allowed any costs incurred after such offer (*g*).

A petition presented, with notice of a prior petition, will generally be dismissed with costs (*h*). Where successive petitions were presented in ignorance of prior petitions, the Court in making the order allowed one set of costs on all the petitions (*i*).

The petitioner's costs, including the costs of establishing his debt, if disputed (*k*), are a first charge on the estate, and must be paid in full, in priority to any costs of the official liquidator (*l*); and the petitioner is entitled to his costs, though a debtor to the company in respect of calls, without having the amount of such calls set off against his costs (*m*).

A petitioner residing out of the jurisdiction must give security for costs (*n*); and so must a policy-holder or shareholder who presents a petition under the Life Assurance Companies Act, 1870 (*o*), unless, *semble*, the company has passed resolutions for a voluntary wind-

(*e*) See *ante*, p. 177, as to costs of withdrawal.

(*f*) *Railway Finance Co.*, 14 W. R. 785.

(*g*) *Times Life Ass.*, L. R. 9 Eq. 382.

(*h*) As to costs where there are several petitions, see *ante*, p. 181.

(*i*) *Owen's Patent Wheel Co.*, 22 W. R. 151.

(*k*) *Universal Non-Tariff Co.*, W.

N. (1875), 54.

(*l*) *Audley Hall Co.*, L. R. 6 Eq. 245; and see *Marlborough Club Co.*, *ibid.* 519.

(*m*) *General Exchange Bank*, L. R. 4 Eq. 138.

(*n*) *East Llangynog Co.*, W. N. (1875), 81. See Comp. Act, 1862, s. 69; and *Diamond Fuel Co.*, W. N. (1879) 180; *post*, p. 187.

(*o*) 33 & 34 Vic. c. 61, s. 21.

ing-up (*p*). But persons out of the jurisdiction, who appear and oppose the petition, cannot be required to give security (*q*).

The amount of such security is in the discretion of the Court (*r*); and, *semble*, unless special reason is shown, it will not exceed £100 (*s*). Such security may be applied for at or before the hearing (*t*); and the company do not, by filing affidavits, after taking out a summons for security, waive their right to such security (*u*).

### *Appeal—Rehearing.*

#### Appeal.

An appeal from an order made on a winding-up petition must be brought within twenty-one days (*x*). The twenty-one days are to be reckoned from the time at which the order is drawn up, or, in the case of the refusal of an application, from the date of such refusal (*y*). The Court of Appeal has power to extend the time, and may give leave to appeal, notwithstanding the three weeks have expired; but such leave will not be given, except under special circumstances (*z*). It seems that the restriction as to the time of appealing does not apply to an appeal brought on the ground that there was no jurisdiction to make the order appealed from (*a*).

It seems that contributories, who appeared below, may appeal from an order with which the petitioner is satis-

(*p*) *British Alliance Corp.*, 9 Ch. D. 635.

(*q*) *Perey Mining Co.*, 2 Ch. D. 531.

(*r*) R. S. C. Ord. LV. r. 2.

(*s*) *Paxton v. Bell*, W. N. (1876), 221, 249; but see *Costa Rica v. Erlanger*, 3 Ch. D. 62; Seton, 125.

(*t*) *Home Ass.*, L. R. 12 Eq. 112; *Atkins v. Cooke*, 3 Drew. 694.

(*u*) *Home Ass.*, *supra*; *exp.*

*Seidler*, 12 Sim. 106; *exp. Latta*, 3 De G. & S. 186.

(*x*) *National Funds Assurance Co.*, 4 Ch. D. 305.

(*y*) R. S. C. Ord. LVIII., rr. 9, 15; but see Buckley, 248.

(*z*) Buckley, 248; and see *Etna Insurance Co.*, 21 W. R. 718.

(*a*) *Plumstead Water Co.*, 2 D. F. & J. 20; *Estates Investment Co.*, L. R. 8 Eq. 227.

fied (b). *Quære*, whether a contributory can appeal without leave, where the liquidator also appeals (c). The Court will not hear creditors and contributories in support of an appeal (d); though creditors may appear and oppose a petitioner's appeal (e).

Where an appeal to discharge a winding-up order is dismissed, the costs of the respondents are ordered to be paid out of the estate, and no order is made as to the costs of the company (f).

Where an appeal from a winding-up order is brought by the company alone, so that no one is personally liable for the costs of the appeal, an application for security for costs will be entertained (g).

Where an order had been irregularly or improperly obtained, an application to vary or discharge it was, if made on the merits, formerly the subject of a regular rehearing, though all parties consented to the order (h); and the petition could be reheard without fresh advertisements, on service and consent of all parties entitled to be served (i). But now a Judge has no jurisdiction to rehear an order made by himself, or any other Judge, the power to rehear being vested in the Court of Appeal, and in that Court alone (k).

(b) *Silkstone Colliery*, 1 Ch. D. 38.

(c) *Ship's Case*, 2 D. J. & S. 544, 550; L. R. 3 H. L. 343, 357; and see *Etna Insurance Co.*, Ir. R. 7 Eq. 362.

(d) *Buckley*, 198.

(e) *New Gas Co.*, 5 Ch. D. 703.

(f) *National Savings Bank Ass.*,

L. R. 1 Ch. 547.

(g) *Diamond Fuel Co.*, W. N. (1879), 180.

(h) *North Wales Slate Co.*, 18 W. R. 403.

(i) *Patent Floor Cloth Co.*, L. R. 8 Eq. 664.

(k) *St. Nazaire Co.*, 12 Ch. D. 88.

*Petition for Leave to Prosecute Directors, &c.*

Winding-up by  
the Court.

Where an order is made for winding-up a company by the Court, or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer, or member of such company, has been guilty of any offence in relation to the company for which he is criminally responsible, the Chancery Division may, on the application by petition (*l*) of any person interested in such winding-up, or of its own motion, direct the liquidators to prosecute such offender; and may order the costs to be paid out of the assets of the company (*m*).

Where there were no funds available, the Court, being unwilling to involve the shareholders in further expense, refused an *ex parte* application under this section (*n*).

Voluntary  
winding-up.

Where the company is being wound up altogether voluntarily, the liquidators may, with the previous sanction of the Court, to be obtained on petition (*o*), prosecute such offender; and all expenses properly incurred in such prosecution shall be payable out of the assets of the company in priority to all other liabilities (*p*).

(*l*) Gen. Ord. Nov. 1862, r. 51.

(*o*) Gen. Ord. Nov. 1862, r. 51.

(*m*) Companies Act, 1862, s. 167.

(*p*) Companies Act, 1862, s. 168;

(*n*) *Euxion Gas Co.*, W. N. (1875),

*Gold Co.*, 11 Ch. D. 701, 719.

## CHAPTER XVIII.

### REDUCTION OF CAPITAL.

A LIMITED company may, by special resolution, so far <sup>Special resolution.</sup> modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital (a), whether nominal or paid up (b); and the power to reduce capital includes a power to cancel any lost capital or any capital unrepresented by available assets; or to pay off any capital which may be in excess of the wants of the company (c).

No resolution for reduction of capital, except a resolution for reduction of capital by cancelling unissued shares (d), shall come into operation, until the order of the Court confirming the reduction is registered (e). <sup>When it comes into operation.</sup>

The company must, after the date of the passing of the resolution, add to its name, until such date as the Court may fix, the words "and reduced" (f). The Court has ordered the words to be continued three months (g), one month (h), and a fortnight (i), from the date of the final order. <sup>Company must add "and reduced" to its name.</sup>

- |                                          |                                            |
|------------------------------------------|--------------------------------------------|
| (a) Companies Act, 1867, s. 9.           | 155; <i>Estate Co.</i> , L. R. 5 Ch. 407.  |
| (b) Companies Act, 1877, s. 3.           | (h) <i>Dunaburg Co.</i> , 20 L. T. N.      |
| (c) <i>Ibid.</i>                         | S. 103.                                    |
| (d) Companies Act, 1877, s. 5.           | (i) <i>Telegraph Construction Co.</i> , L. |
| (e) Companies Act, 1867, s. 9.           | R. 10 Eq. 384; <i>Muntz &amp; Co.</i> , 18 |
| (f) Companies Act, 1867, s. 10.          | W. R. 1064; <i>Crédit Foncier</i> , L. R.  |
| (g) <i>Sharp &amp; Co.</i> , L. R. 5 Eq. | 11 Eq. 356; <i>National Arms Co.</i> ,     |

Where, however, the reduction does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, it is not necessary, before presenting the petition, to add such words ; and in such a case the Court may altogether dispense with them (*k*).

**Petition.** The application to the Court (*l*) to confirm a reduction of capital must be by petition (*m*).

**Title.** The petition, and all notices, affidavits, and other proceedings under such petition, should be intituled in the matter of The Companies Acts, 1867 and 1877, and of the company in question (*n*).

**Advertisement.** Notice of the presentation of the petition shall be published at such times and in such newspapers as the Judge shall direct, so that the first insertion of such notice be made not less than one calendar month before the day of the date with reference to which the list of creditors is to be made out (*o*).

**Placing in list.** The petition cannot be placed in the list of petitions until after eight clear days from the filing of the chief clerk's certificate as to creditors (*p*).

**Proceedings after petition presented.** When the petition has been presented, application may be made *ex parte* by summons in chambers for directions as to the proceedings to be taken for settling the list of creditors entitled to object to the proposed reduction ; and the Judge may thereupon fix the date with reference to which the list of such creditors is to be made out (*q*) ; and may at the same time or afterwards give such direc-

W. N. (1877), 31 ; *Patent Ventilating Co.*, 12 Ch. D. 254.

(*k*) Companies Act, 1877, s. 4.

(*l*) For definition of Court, see Companies Act, 1867, s. 12.

(*m*) Companies Act, 1867, s. 11.

(*n*) Gen. Ord. March, 1868, r. 2 ;

*Patent Ventilating Co.*, *supra*.

(*o*) Gen. Ord. March, 1868, r. 5.

As to when the directions may be given, see *ibid.* r. 4, *infra*.

(*p*) Gen. Ord. March, 1868, r. 3.

(*q*) Pursuant to Companies Act, 1867, s. 13.



tions as are mentioned in the 5th and 6th rules of the Gen. Ord. March, 1868 (*r*).

Every creditor who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, is entitled to be entered on the list of creditors (*s*). Debenture holders are also entitled to be entered (*t*). Who entitled to object.

When the reduction of capital does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, the creditors of the company shall not, unless the Court otherwise direct, be entitled to object or be required to consent to the reduction (*u*).

The company must, within such time as the Judge shall direct (*x*), file in the Record and Writ Office, now the Central Office, an affidavit, made by some officer or officers of the company competent to make the same, verifying a list containing the names and addresses of the creditors of the company at the date fixed as aforesaid, and the amounts due to them respectively; and must leave the said list, and an office copy of such affidavit, at the chambers of the Judge (*y*). Affidavit as to creditors.

The person making such affidavit shall state therein his belief that such list is correct, and that there was not at the date so fixed as aforesaid any debt or claim, which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, except the debts set forth in such list, and shall

(*r*) Gen. Ord. March, 1868, r. 4.

(*s*) Companies Act, 1867, s. 13.

(*t*) *Crédit Foncier*, L. R. 11 Eq. 356; *Patent Ventilating Co.*, 12 Ch. D. 254.

(*u*) Companies Act, 1877, s. 4.

(*x*) As to when such directions may be given, see Gen. Ord. March, 1868, r. 4, *ante*.

(*y*) Gen. Ord. March, 1868, r. 6. As to Central office, see R. S. C. Dec. 1879.

state his means of knowledge of the matters deposed to in such affidavit (z).

Inspection of list.

Copies of such list shall be kept by the company and their solicitors, and may be inspected on payment of one shilling (a).

Notice to creditors.

The company shall, within seven days after the filing of such affidavit, or such further time as the Judge may allow, send by post to each creditor in the said list a notice stating the amount of the proposed reduction, and the amount of the debt for which he is entered in the list, and the time (to be fixed by the Judge) within which, if he claims a larger amount, he must send in his name and address, and the particulars of his claim, and the name and address of his solicitor, to the solicitor of the company (b).

Service of such notice on creditors residing abroad will be dispensed with, on the company bringing into Court the amounts set opposite to their names in the said list, and on giving them notice that this has been done (c).

Advertisement of list.

Notice of the list of creditors shall, after the filing of the affidavit, be published at such times, and in such newspapers, as the Judge shall direct. Every such notice shall state the amount of the reduction, and the places where the list of creditors may be inspected, and the time within which creditors, not entered on the said list, and desirous of being entered therein, must send in their names and addresses, and the particulars of their claim, and the names and addresses of their solicitors (if any), to the solicitor of the company (d).

(z) Gen. Ord. March, 1868, r. 7.  
For form of affidavits, see Schedule to same Order, form 3.

(a) Gen. Ord. March, 1868, r. 8.

(b) *Ibid.* r. 9. For form of

notice, see Schedule to same Order, form 4.

(c) *West Indian Steam-Packet Co.*, 19 L. T. N. S. 310.

(d) Gen. Ord. March, 1868, r. 10.

The company shall, within such time as the judge shall direct, file an affidavit made by their solicitor stating the result of such notices respectively, and verifying a list containing the names and addresses of the persons (if any) who shall have sent in the particulars of their claims, and the amount of such claims; and some competent officer or officers of the company shall join in such affidavit, and shall distinguish which claims are admitted and which disputed by the company; and such list, and an office copy of such affidavit, shall, within such time as the judge shall direct, be left at the chambers of the judge (e). Affidavit as to result of notices.

If any claim shall not be admitted, then, unless the company are willing to set apart the full amount of such claim, the company shall, if the judge think fit so to direct, send to the creditor a notice to come in and prove such claim by a day to be therein named, being not less than four clear days after such notice, and being the time appointed by the judge for adjudicating upon such claims; and such notice shall be sent by post (f). Proceedings where claim not admitted.

Such creditors as come in to prove their claims shall be allowed their costs of proof against the company, and be answerable for costs in the same manner as in the case of persons coming in to prove debts under a decree in a cause (g). Costs of proof.

Where a creditor, whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may, if it think fit, dispense with such consent, on the company securing the payment of the debt or Court may dispense with consent of creditor, on security being given for his debt.

(e) Gen. Ord. March, 1868, r. 11.  
For form of affidavit, see schedule to same order, form, 6.

12. For form of notice, see schedule to same order, form, 7.

(g) Gen. Ord. March, 1868, r. 13.

claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned: (that is to say,)

- (1.) If the full amount of the debt or claim is admitted by the company, or, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated :
- (2.) If the full amount of the debt or claim is not admitted, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated (*h*).

Where all the creditors had been paid or consented, except one trade creditor for 30s., and three debenture holders to whom £4000 was due, and the three debenture holders had neither assented nor dissented, the Court refused to confirm the resolution, unless the three debenture holders consented or unless the £4000 was paid into Court, and unless the creditor for 30s. was paid or the sum deposited (*i*).

Chief clerk's  
certificate as  
to creditors.

The result of the settlement of the list of creditors shall be stated in a certificate of the chief clerk, and such certificate shall state what claims have been disallowed, and

(*h*) Companies Act, 1867, s. 14.

(*i*) *Patent Ventilating Co.*, 12 Ch. D. 254.

shall distinguish the claims which the company are willing to set apart and appropriate, and the claims which have been fixed by inquiry and adjudication, and the claims which are not admitted by the company, nor such as the company are willing to set apart and appropriate, and the amount of which has not been fixed by adjudication; and shall show which creditors have consented in writing to the proposed reduction, and the total amount of debts or claims due to them, and the total amount of the debts or claims which have been secured in manner aforesaid, and the persons to or by whom the same are due or claimed; but it shall not be necessary to show the several amounts of the debts or claims of any persons who have consented or the payment of whose debts or claims has been secured as aforesaid (*k*).

After the expiration of eight clear days from the filing of the certificate, the petition may be placed in the list of petitions, upon a note from the chief clerk to the secretary of the Lord Chancellor or of the Master of the Rolls, stating that the certificate has been filed and become binding (*l*). Placing petition in list.

Before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers as the judge shall direct (*m*). Advertisement of petition.

The Court may, if it thinks fit, require the company to publish the reasons for, and the causes which led to, the reduction, and such other information in regard to the reduction as it may think expedient (*n*).

Any creditor settled on the list whose debt or claim has Creditors may appear.

(*k*) Gen. Ord. March, 1868, r. 14; and Ord. March, 1869. notice, see schedule to same order, form, 8.

(*l*) Gen. Ord. March, 1868, r. 15. (*n*) The Companies Act, 1877, s.

(*m*) *Ibid.* r. 16. For form of 4.

not been discharged or secured in manner above mentioned, and who has not before the hearing signed a consent to the proposed reduction, may, if he think fit, upon giving two clear days' notice to the solicitor of the company of his intention so to do, appear at the hearing of the petition and oppose the application (o).

Costs of appearance.

Where a creditor so appears whose claim is not admitted, and has not been inquired into and adjudicated upon as aforesaid, the costs of and occasioned by his appearance shall be dealt with as to the Court shall seem just; but in all other cases, a creditor so appearing shall be entitled to his costs, unless the Court shall be of opinion that under the circumstances of the particular case his costs ought not to be allowed (p).

Directions on the hearing.

When the petition comes on to be heard, the Court may, if it shall think fit, give such directions as may seem proper with reference to securing in manner aforesaid the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing may be adjourned for the purpose of allowing steps to be taken for securing such payment (q).

Form of order.

On the hearing of the petition, the Court, if satisfied that, with respect to every creditor who is entitled to object to the reduction, either his consent has been obtained, or his debt has been discharged or secured in manner aforesaid, may make an order confirming the reduction, on such terms and subject to such conditions as it deems fit (r).

The order confirming the reduction shall give directions as to the manner in which notice of the registration of

(o) Gen. Ord. March, 1868. r.  
17.

(p) *Ibid.* r. 18.

(q) *Ibid.* r. 19.

(r) Companies Act, 1867, s. 11;  
*Patent Ventilating Co.*, 12 Ch. D.  
254.

the order and of the minute mentioned below is to be published, and shall fix the date until which the words "and reduced" are to form part of the name of the company (s).

The Registrar of Joint Stock Companies, upon produc-  
tion to him of the order, and delivery to him of a copy of  
the order, and of a minute (approved by the Court) show-  
ing the amount of the capital as altered by the order, the  
number of shares into which it is to be divided, the  
amount of each share, and the amount deemed to be paid  
up on each share (t), shall register the order and minute;  
and on such registration the special resolution confirmed  
by the order shall take effect (u). Order and  
minute to be  
registered.

The minute when registered shall form part of the Minute.  
memorandum of association of the company (x); and shall  
be embodied in every copy of such memorandum issued  
after its registration (y).

(s) Gen. Ord. March, 1868, r.  
20.

(t) Companies Act, 1877, s. 4.

(u) Companies Act, 1867, s. 15.

(x) *Ibid.* s. 16.

(y) *Ibid.* s. 18.

## CHAPTER XIX.

### JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870.

Arrangement  
with creditors.

WHERE any compromise or arrangement is proposed between a company, which is being wound up, and its creditors, the Court may, on the application in a summary way of any creditor or the liquidator, order a meeting of such creditors to be summoned; and if a majority in number, representing three-fourths in value, of such creditors agree to an arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all the creditors, and also on the liquidator and contributories of the company (*a*).

It is necessary that the claims of the individual creditors who compose the majority should be capable of being estimated (*b*).

Debenture  
holders.

Debenture holders are creditors for the purpose of agreeing to the arrangement (*c*); but holders of debentures passing by delivery are not entitled to vote, unless they produce their debentures at or before the meeting (*d*).

Majority.

Only those creditors who were present at the meeting

(*a*) 33 & 34 Vic. c. 104, s. 2.  
Compare Companies Act, 1862, ss.  
136, 159, 160.

(*b*) *Albert Life Ass.*, L. R. 6 Ch.  
381.

(*c*) *Slater v. Darlaston Co.*, W.  
N. (1877), 139, 165.

(*d*) *Wedgwood Coal Co.*, 6 Ch. D.  
627.



are to be attended to; and three-fourths in value of those present are sufficient to sanction the arrangement (*e*).

The Court will not sanction an arrangement, if persons *Bonâ fides*. voting in favour of the scheme are not acting *bond fide* in the interests of the creditors (*f*); nor where the petitioner is not a creditor, but has bought up the debts and petitions for his own personal benefit (*g*).

If the arrangement has received the sanction of the majority of the contributories and creditors, and also the sanction of the Court, it is not material in what order these sanctions have been obtained. When the arrangement is a fair one, and likely to be beneficial to all parties, the Court will not be astute to find technical defects in the proceedings (*h*). When sanction to be obtained.

The Court will not as a general rule sanction an arrangement which would prejudice a creditor whose rights would have been preferential if the petition had been carried on. Where, therefore, a judgment creditor delayed issuing execution on the representation of the company that they did not intend to present a winding-up petition, the Court refused to sanction an arrangement from which the judgment creditor dissented, though all the other creditors agreed to the scheme (*i*). Preferential creditors.

The usual practice is to apply in chambers for directions as to holding the meeting; and when the sanction of the majority has been obtained, to present a petition for the sanction of the Court (*j*). Practice.

Where a petition is presented in the first instance, it

- |                                                                      |                                                                                                                                                                            |
|----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ( <i>e</i> ) <i>Bessemer Steel Co.</i> , 1 Ch. D. 251.               | D. 605.                                                                                                                                                                    |
| ( <i>f</i> ) <i>Wedgwood Coal Co.</i> , 6 Ch. D. 627.                | ( <i>i</i> ) <i>Richards &amp; Co.</i> , 11 Ch. D. 676.                                                                                                                    |
| ( <i>g</i> ) <i>International Contract Co.</i> , 26 L. T. N. S. 358. | ( <i>j</i> ) <i>Bessemer Steel Co.</i> , <i>supra</i> ; <i>Wedgwood Coal Co.</i> , <i>supra</i> ; <i>Palmer</i> , 588; but see <i>Dynevor Dyffryn Co.</i> , 11 Ch. D. 605. |
| ( <i>h</i> ) <i>Dynevor Dyffryn Co.</i> , 11 Ch.                     |                                                                                                                                                                            |

will be directed to stand over until after a meeting has been held (*k*).

Title of petition.

The petition must be intituled in the matter of the Joint Stock Companies Arrangement Act, 1870, as well as in the matter of the Companies Acts, 1862 and 1867, and in the matter of the company in question (*l*).

Costs.

The costs of all parties, except dissentient creditors, have been ordered to be paid out of the estate (*m*).

(*k*) *Slater v. Darlaston Co.*, W. N. (1877), 139, 165 ; and see *Western of Canada Co.*, W. N. (1874), 148 : where a meeting of creditors and contributories was ordered.

(*l*) *Slater v. Darlaston*, *supra*. For form of petition, see Palmer, p. 579 ; and *post*.

(*m*) *Tunis Railways Co.*, W. N. (1874), 121.

## CHAPTER XX.

### RAILWAY COMPANIES ACT, 1867.

A SCHEME of arrangement between a railway company and its creditors must be confirmed by the Court (a). <sup>Application, how made.</sup> The application is by petition, and may be made by the directors of the company if, within three months after the filing of the scheme, or within such extended time as the Court thinks fit to allow, the directors consider the scheme to be assented to as required by the Act (b).

The scheme shall be deemed to be assented to by the <sup>Assents.</sup> holders of mortgages or bonds if assented to in writing by three-fourths in value of such holders, and shall be deemed to be assented to by the debenture stock holders if assented to by three-fourths in value of the holders of such stock (c).

When any rent-charge or other payment is charged on receipts of, or is payable by the company in consideration of the purchase of the undertaking of another company, the scheme shall be deemed to be assented to by the holders of such rent-charge or other payment when it is assented to in writing by three-fourths in value of such holders (d).

(a) Railway Companies Act, 1867  
(30 & 31 Vic. c. 127), s. 18.

(b) *Ibid.* s. 16.

(c) *Ibid.* s. 10.

(d) *Ibid.* s. 11.

The scheme shall be deemed to be assented to by the guaranteed or preference shareholders if assented to in writing by three-fourths in value of such holders, or, if there are more classes than one of such holders, by three-fourths in value of each such class (*e*).

It shall be deemed to be assented to by the ordinary shareholders if assented to at an extraordinary general meeting specially called for that purpose (*f*).

Where the company are lessees of a railway, the scheme shall be deemed to be assented to by the leasing company when it is assented to as follows:—In writing by three-fourths in value of the holders of mortgages, bonds, and debenture stock of the leasing company; If there is only one class of guaranteed or preference shareholders of the leasing company, then in writing by three-fourths in value of such class, and if more than one class, by three-fourths in value of each class; By the ordinary shareholders of the leasing company at an extraordinary general meeting of that company specially called for that purpose (*g*).

Where no assent is necessary.

But the assent of any class of holders of mortgages, bonds, or debenture stock, or of any class of holders of a rent-charge or other payment as aforesaid, or of any class of guaranteed or preference shareholders, or of a leasing company, shall not be requisite if the scheme does not prejudicially affect any right or interest of such class or company (*h*).

Form of petition.

The petition must be presented by the directors or the majority of them. Such petition shall not set forth the scheme, but only refer thereto (*i*).

(*e*) Railway Companies Act, 1867, s. 12.

(*f*) *Ibid.* s. 14.

(*g*) *Ibid.* s. 15.

(*h*) *Ibid.* s. 13.

(*i*) Ord. 24 Jan. 1868, r. 15. For form of petition, see third schedule to same order, form, 2; and *post*.

When the petition is presented the directors shall apply in chambers to appoint a day on which the same is to come into the paper for hearing, such day not to be before the expiration of three weeks from the time of such application, and shall cause a notice of the presentation thereof to be inserted in the *London Gazette*, and in such two London daily morning newspapers, or in such two local newspapers as the judge in chambers shall direct. Such notice shall state the day on which the scheme was filed, and the day on which the petition was presented, and the day on which the same is directed to come into the paper for hearing, and the name and address of the solicitor and London agent (if any) of the company (*k*).

Advertisement  
of petition.

The petition shall not come on to be heard until at least fourteen clear days after the insertion of such notice as aforesaid (*l*).

Such notice shall at least once in every entire week, reckoned from Sunday morning to Saturday evening, which shall have elapsed between the time of the first insertion thereof, and the day on which the petition is directed to come into the paper for hearing, be again inserted in such two London or local newspapers as aforesaid on such day or days as the judge in chambers shall direct (*m*).

The petitioners presenting the petition as aforesaid shall, for the purposes of such petition, be treated as representing the company, and the company shall not otherwise appear on the hearing of the petition (*n*).

Who may be  
heard.

Any creditor, shareholder, or other party whose rights or interests are affected by the scheme, and who shall

(*k*) Ord. 24 Jan. 1868, r. 17.  
For form of notice, see third  
schedule to same order, form, 3.

(*l*) Ord. 24 Jan. 1868, r. 18.  
(*m*) *Ibid.*  
(*n*) *Ibid.* r. 16.

be desirous to be heard in opposition to the confirmation thereof, shall, at least two clear days before the day appointed for hearing, enter an appearance, and in default of so doing, shall not be entitled to be heard, unless by special leave of the Court (*o*).

Any person so entering an appearance shall be deemed to have submitted himself to the jurisdiction of the Court as to the payment of costs and otherwise (*p*).

Order.

After hearing the directors, and any creditors, shareholders, or other parties whom the Court thinks entitled to be heard on the application, the Court, if satisfied that the scheme has been, within three months after the filing of it, or such extended time (if any) as the Court has allowed, assented to as required by the Act, and that no sufficient objection to the scheme has been established, may confirm the scheme (*q*).

Minority is bound.

Where a scheme has been assented to by the statutory three-fourths of any class, the minority will be bound unless they can show that the majority was obtained by fraud (*r*). A debenture holder, though he has obtained judgment, is still bound by the scheme (*s*).

Outside creditors.

Unpaid landowners and outside creditors generally, are not in any way bound by the scheme (*t*); and their assent is not required (*u*). They ought not therefore to appear at the hearing (*w*).

The Court will not confirm a scheme which attempts

(*o*) Ord. 24 Jan. 1868, r. 19; *Bristol & Somerset Rly.*, L. R. 6 Eq. 448, 455.

(*p*) Ord. 24 Jan. 1868, r. 20; *Bristol & Somerset Rly.*, *supra*.

(*q*) Railway Companies Act, 1867, s. 17.

(*r*) *East & West Junction Rly.*, L. R. 8 Eq. 87.

(*s*) *Potteries Rly. Co. v. Minor*,

L. R. 6 Ch. 621.

(*t*) *Cambrian Rly. Co.*, L. R. 3 Ch. 278; *Stevens v. Mid-Hants Rly.*, L. R. 8 Ch. 1064; *Teign Valley Rly.*, 17 W. R. 817.

(*u*) *East & West Junction Rly.*, *supra*.

(*w*) *Kington Rly. Co.*, W. N. (1877), 33.

to bind outside creditors unless it has their written consent (*x*).

The Court has no power to confirm a scheme which alters the constitution of the company (*y*).

The order confirming the scheme must be enrolled, but not until the expiration of thirty days from the day of the same having been pronounced, exclusive of vacations (*z*). Enrolment of order.

The order must be advertised once in every entire week between the pronouncing of the order, and the expiration of the thirty days aforesaid in the two newspapers appointed by the judge as aforesaid; and the clerk of records and writs shall not give his certificate that the docket of the enrolment is correct, unless the newspapers containing such advertisements be produced to him (*a*). Advertisement of order.

No caveat shall be entered to stay the enrolment; but every such order may be enrolled at the expiration of the thirty days, unless in the meantime a petition for rehearing shall have been presented, and an order for setting down such petition obtained and served (*b*).

No petition for a rehearing shall unless by special leave be presented after the expiration of the thirty days aforesaid (*c*). Rehearing.

Where an order has been made confirming a scheme, no person who has neither entered an appearance as

(*x*) *Bristol & Somerset Rly.*, L. R. 6 Eq. 448; *Stephens v. Cork Rly.*, Ir. R. 6 Eq. 604; and see *Somerset & Dorset Rly.*, 18 W. R. 333.

(*y*) *Stafford & Uttoxeter Rly.*, 41 L. J. Ch. 777: where it was proposed to give debenture stock holders a right to vote.

(*z*) Railway Companies Act, 1867, s. 18; Ord. 24 Jan. 1868, r. 21; but see *Hastie v. Hastie*, 1 Ch. D. 562.

(*a*) Ord. 24 Jan. 1868, r. 22.

(*b*) *Ibid.* r. 24; but see *St. Nazaire Co.*, 12 Ch. D. 88.

(*c*) *Ibid.* r. 25; but see *St. Nazaire Co.*, *supra*.

aforesaid nor by special leave has been heard in opposition as aforesaid may present a petition for rehearing unless by special leave (*d*).

Notice of the confirmation and enrolment of the scheme must be published in the *Gazette* (*e*).

(*d*) Ord. 24 Jan. 1868, r. 26 ; *re* 12 Ch. D. 88.  
*Devon Railway Co.*, W. N. (1868), (*e*) Railway Companies Act, 1867,  
238 ; but see *St. Nazaire Co.*, s. 19.



## CHAPTER XXI.

### LIFE ASSURANCE COMPANIES ACTS, 1870 TO 1872.

WHERE it is intended to amalgamate two or more companies, or to transfer, the life assurance business of one company to another, the directors of any one or more of such companies may apply to the Court, by petition, to sanction the proposed arrangement, notice of such application being published in the *Gazette*; and the Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may confirm the same if it is satisfied that no sufficient objection to the arrangement has been established (a). Petition for amalgamation or transfer.

Before any such application is made to the Court, a statement of the nature of the amalgamation or transfer, together with an abstract containing the material facts embodied in the agreement or deed under which such amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which such agreement or deed is founded, shall be forwarded to each policy-holder of both companies in case of amalgamation, or to each policy-holder of the transferred company in case of transfer, by the same being transmitted in manner provided by the Companies Clauses Consolidation Act, 1845, s. 136, for the transmission to shareholders of notices not requiring to be served personally (b). Notice to policy-holders.

The agreement or deed under which such amalgamation or transfer is effected shall be open for the inspection of Inspection of deed.

(a) Life Assurance Companies Act, 1870, s. 14.

(b) *Ibid.* As to winding up assurance companies, see *ante*, p. 164.

the policy-holders and shareholders at the office or offices of the company or companies for a period of fifteen days after the issuing of the abstract (c).

Dissent of  
one-tenth of  
policy-holders.

The Court shall not sanction any amalgamation or transfer in any case in which it appears to the Court that policy-holders (d) representing one-tenth or more of the total amount assured in any company which it is proposed to amalgamate or in any company the business of which it is proposed to transfer, dissent from such amalgamation or transfer (e).

Sanction of  
Court neces-  
sary.

No company, whose business comprises the business of life assurance, shall amalgamate with, or transfer its business to another, unless such amalgamation or transfer is confirmed by the Court in manner above mentioned (f).

Deposit of do-  
cuments with  
Board of Trade.

Within ten days from the completion of the amalgamation or transfer, the combined or purchasing company shall deposit with the Board of Trade certified copies of statements of the assets and liabilities of the companies concerned, together with a statement of the nature and terms of the amalgamation or transfer, and a certified copy of the deed of amalgamation or transfer, and certified copies of the reports, and a declaration by the chairman and manager of each company that all payments in respect of the amalgamation or transfer are fully set forth in the statement and deed, and that there are no other payments, made or to be made (g).

Investment  
and payment  
out of deposit.

Applications for investment and payment out of moneys deposited under the Life Assurance Companies Acts, 1870 to 1872, are made by petition (h).

(c) Life Assurance Companies Act, 1870, s. 14.

Act, 1870, s. 14.

(f) *Ibid.*

(d) This includes an annuitant, see s. 2.

(g) *Ibid.* s. 15.

(e) Life Assurance Companies Aug. 1872.

(h) Board of Trade Rules, 28

## CHAPTER XXII.

### SOLICITOR'S CHARGE FOR COSTS.

WHERE a solicitor is employed to prosecute or defend any suit, matter, or proceeding, in any Court of justice, the Court or judge, before whom such suit, matter, or proceeding has been heard or is depending, may declare the solicitor entitled to a charge upon the property recovered or preserved. Upon such declaration being made the solicitor shall have a charge upon, and a right to payment out of, the property recovered or preserved through the instrumentality of such solicitor, for the taxed costs, charges, and expenses, of or in reference to such suit, matter, or proceeding; and the Court or judge may make such order for taxation, and for raising and payment of such costs, charges, and expenses, out of the property as to the Court or judge shall appear just and proper (a).

Solicitors Act,  
1860, s. 28.

No order shall be made where the right to recover payment of such costs is barred by statute (a).

All conveyances and acts, unless made to a *bond fide* purchaser for value without notice, shall be void and of no effect as against such charge (b).

The declaration is usually made on petition, intituled in Application:  
how made.

(a) Attorneys & Solicitors Act,  
1860 (23 & 24 Vic. c. 127), s. 28.

(b) Attorneys & Solicitors Act,  
1860 (23 & 24 Vic. c. 127), s. 28.

the matter of the action and of the Act (c). It has been held that the order need not be intituled in the Act, as well as in the action; and that the application need not be by petition, but may be made by summons (d). In a subsequent case however the application was held to be properly made by petition (e).

**To what Court.** The order should be made by the Division of the Court to which the action is attached (f). Where an action is brought in the Chancery Division, and afterwards tried by a judge and jury, the order should be made by the judge who tried the action (g); but the Common Pleas Division has recently made a charging order upon property recovered in the Common Pleas at Lancaster (h).

**Service.** Where the application is for an order charging the share of a party to an action, it is not necessary to serve the other parties to the action (i).

**Who entitled to a charge.** The lien is not personal to the solicitor but extends to his personal representatives (k), and also to the London agent (l).

**What property is chargeable.** A married woman's property is chargeable with the costs of her suit (m); and the property of an infant is chargeable with the costs of his next friend, on the infant's coming of age (n).

(c) *Twynam v. Porter*, L. R. 11 Eq. 181; *Brown v. Trotman*, 12 Ch. D. 880.

(d) *Hammer v. Giles*, 11 Ch. D. 942; but see *Brown v. Trotman*, *supra*.

(e) *Brown v. Trotman*, 12 Ch. D. 880.

(f) *Re Fidley*, L. R. 6 Ch. 865; *Higgs v. Schrader*, 3 C. P. D. 252.

(g) *Owen v. Henshaw*, 7 Ch. D. 385

(h) *Callow v. Callow*, 2 C. P. D. 362.

(i) *Brown v. Trotman*, 12 Ch. D. 880.

(k) *Baile v. Baile*, L. R. 13 Eq. 497, 509.

(l) *Peatfield v. Barlow*, L. R. 8 Eq. 61; *Cockayne v. Harrison*, L. R. 15 Eq. 298; *Tardrew v. Howell*, 3 Giff. 381; *Lawrence v. Fletcher*, W. N. (1879), 153.

(m) *Re Keane*, L. R. 12 Eq. 115.

(n) *Baile v. Baile*, L. R. 13 Eq.

The order declaring the charge may be made though the suit has come to an end (o).

The charge extends only to the particular property in the recovery or preservation of which the costs were incurred (p); and only to the costs of the particular suit in which the fund was recovered (q). There must have been an actual recovery or preservation (r); but the charge is not limited to the client's interest in the property recovered or preserved (s).

The charge extends to property of all kinds (t), even to a chose in action (u); but not to an easement (x).

Property has been held to have been "recovered or preserved:" where a mortgagee obtained an ordinary foreclosure decree (y); where a *cestui que trust* obtained the appointment of a receiver in an action against a trustee, though the action was afterwards compromised (z); where an order was made under the Declaration of Titles Act (a); where a cloud was removed from the plaintiff's title, though the incumbrance itself was valueless (b); where a defendant established his claim as second mortgagee in an action in which judgment for foreclosure was given (c); but not where an ordinary decree for administration and the

497; *Pritchard v. Roberts*, L. R. 17 Eq. 222; *Bonser v. Bradshaw*, 4 Giff. 260.

(o) *Re Fiddey*, L. R. 6 Ch. 865; *Jones v. Frost*, L. R. 7 Ch. 773; *Wilson v. Round*, 12 W. R. 402.

(p) *Exp. Thompson*, 3 L. T. N. S. 317.

(q) *Hall v. Laver*, 1 Ha. 571; *Lucas v. Peacock*, 9 Beav. 177.

(r) *Pinkerton v. Easton*, L. R. 16 Eq. 490.

(s) *Bulley v. Bulley*, 8 Ch. D. 479; *Bailey v. Birchall*, 2 H. & M. 371.

(t) *Foxon v. Gascoigne*, L. R. 9 Ch. 654, 659.

(u) *Birchall v. Pugin*, L. R. 10 C. P. 397.

(x) *Foxon v. Gascoigne*, *supra*.

(y) *Wilson v. Round*, 4 Giff. 416.

(z) *Twynam v. Porter*, L. R. 11 Eq. 181.

(a) *Pritchard v. Roberts*, L. R. 17 Eq. 222.

(b) *Jones v. Frost*, L. R. 7 Ch. 773.

(c) *Scholefield v. Lockwood*, L. R. 7 Eq. 83.

appointment of new trustees, was made, and the suit was not prosecuted beyond bringing in certain accounts (*d*).

Assignment or mortgage.

The charge on a fund in Court is not affected by assignment or mortgage of the fund, whether with or without notice, and though made with the knowledge of the solicitor (*e*).

Charge on a particular fund.

Where an order has been made to pay the solicitor his costs out of a particular fund, he is not entitled to a charging order on his client's interest (*f*); unless he has been discharged before payment (*g*).

Lunatic's property.

A solicitor may obtain a charging order on the property of a lunatic in respect of the costs of lunacy proceedings (*h*); and though the lunatic is dead (*i*); but the order must be made in Lunacy.

(*d*) *Pinkerton v. Easton*, L. R. 16 Eq. 490; but see *Smith v. Winter*, 18 W. R. 447.

(*e*) *Haymes v. Cooper*, 33 Beav. 431; *Faithfull v. Ewen*, 7 Ch. D. 495; *Pilcher v. Arden*, 7 Ch. D. 318.

(*f*) *Re Viney*, 18 L. T. N. S. 853.

(*g*) *Pilcher v. Arden*, 7 Ch. D. 318.

(*h*) 16 & 17 Vic. c. 70, s. 116; 25 & 26 Vic. c. 86, ss. 11, 16.

(*i*) 23 & 24 Vic. c. 123, s. 29; *exp. Turner*, 2 D. F. & J. 376.

## CHAPTER XXIII.

### TAXATION OF BILLS OF COSTS.

AN order for taxation of costs may be obtained on petition of course at the Rolls where the application is made (1) Within one calendar month from the delivery of the bill, exclusive of the day on which the bill is delivered (*a*); or (2) After one month and before the expiration of twelve from delivery, provided there has been no verdict or writ of enquiry in an action by the solicitor to recover the amount, nor payment of the bill, not being a mere payment on account (*b*).

But where the application is made twelve months after delivery; or where it is made within that period, but after a verdict, writ of enquiry, or payment; or where there are special circumstances, a special application must be made to a judge at Chambers by summons (*c*).

A special application by summons is necessary where the application is by one of several persons who gave a

(*a*) Attorneys & Solicitors Act, 1843 (6 & 7 Vic. c. 73), s. 37; *Blunt v. Heslop*, 8 Ad. & Ell. 577; *re Becke*, 5 Beav. 406, 409; *Holland v. Gwynne*, 8 Beav. 124.

(*b*) *Re Gaitskell*, 1 Phil. 576; *re Pender*, 2 Phil. 69; *re Woodard*, 18 W. R. 37; and see *re Holland*,

19 Beav. 314; *re Winterbottom*, 15 Beav. 80. For form of petition, see *post*.

(*c*) Gen. Ord. 17 April, 1861, r. 1. As to taxation of costs payable under an agreement between solicitor and client, see *post*, p. 217, *et seq.*

joint retainer (*d*) ; where the client has settled and signed an account including the bill of costs (*e*) ; where the professional employment or retainer is disputed (*f*) ; where the application is to tax one of several bills or a bill including only part of the costs (*g*) ; or where the application is by *cestui que trusts* for taxation of bills of trustees, executors, or administrators (*h*).

But a special application is not rendered necessary by the fact that the solicitor has brought an action for his bill (*i*), or pleaded it by way of set-off in an action by his client (*j*), or that there is a special agreement which does not preclude taxation (*k*).

Who may  
apply.

The application may be made by the person chargeable (*l*) ; or by a married woman, who has agreed to make her separate estate liable (*m*), by her next friend (*n*) ; or by the next friend of an infant (*o*) ; or by the executors of the person chargeable (*p*) ; or by a trustee in bankruptcy if he undertake to pay the bill (*q*) ; or by a party in contempt (*r*) ; but not by a bankrupt (*s*), even though he has obtained his discharge (*t*).

Title of peti-  
tion.

The petition should be intituled in the matter of the

(*d*) *Re Ilderton*, 33 Beav. 201 ;  
*re Kitton*, 35 Beav. 369 ; *re Hair*,  
10 Beav. 187 ; *exp. Ford*, 5 D. M.  
& G. 35.

(*e*) *Re Holland*, 19 Beav. 314.

(*f*) *Re Eldridge*, 12 Beav. 387 ;  
*re Thurgood*, 19 Beav. 541.

(*g*) *Re Law & Gould*, 21 Beav.  
481 ; *re Yetts*, 33 Beav. 412 ; *exp.*  
*Jarman*, 4 Ch. D. 835.

(*h*) *Re Straford*, 16 Beav. 27 ;  
see *re Brown*, L. R. 4 Eq. 464.

(*i*) *Re Field*, W. N. (1877), 244 ;  
*re Farington*, 33 Beav. 346.

(*j*) *Re David*, 30 Beav. 278.

(*k*) *Re Eyre*, 2 Phil. 367.

(*l*) 6 & 7 Vic. c. 73, s. 37 ; *re*  
*Newman*, L. R. 2 Ch. 707 ; *re*  
*Heritage*, 3 Q. B. D. 726.

(*m*) *Waugh v. Waddell*, 16  
Beav. 521.

(*n*) *Seton*, 608 ; *re Waugh*, 15  
Beav. 508.

(*o*) *Re Flucker*, 20 Beav. 143.

(*p*) *Jefferson v. Warrington*, 7  
M. & W. 137.

(*q*) *Re Elmslie*, L. R. 9 Eq. 72.

(*r*) *Newton v. Ricketts*, 11 Beav.  
67.

(*s*) *Re Halsall*, 11 Beav. 163.

(*t*) *Re Leadbitter*, 10 Ch. D. 388.



London agent, as well as of the country solicitor, but it need not be intitled in the matter of the Act (*u*).

The order should be served in the usual way on the Service. party against whom it is obtained (*v*). Where the solicitor is not the applicant and the order directs the delivery of his bill within a limited time, the order should be indorsed and served in the usual manner (*w*).

An order of course for taxation recites the statements Form of order. of the petition, including the submission to pay what shall be found due, where the application is not made by the solicitor (*x*), and then directs the taxation, and production by the client and solicitor upon oath of books and papers relating to the bill, and that they shall be examined as the Master shall direct, and that the solicitor shall give credit for all sums received on account of the client. The order then directs payment of the costs of taxation, and directs the Master to certify the balance due to the solicitor or client, as the case may be; and orders payment thereof within a certain time (*y*). It is discretionary with the Court whether to add a direction for delivery up of papers, but in an ordinary case it will be inserted (*z*). The order concludes with a direction that no proceedings shall be commenced against the petitioner in respect of the bill. No order can now be made to stay proceedings already commenced (*a*). If the application is also for delivery of the bill, the order will contain a direction for such delivery; usually within a fortnight (*b*).

If a special application by summons is made where an

(*u*) *Re Walton*, 4 K. & J. 78.  
For form of petition, see *post*.

(*v*) *Daniell*, 1735; and see *re Hair*, 10 Beav. 187. As to service of orders of course, see *ante*, p. 17.

(*w*) *Daniell*, 903-905; and see *re Gregg*, L. R. 9 Eq. 137, 143.

(*x*) *Re Thurgood*, 19 Beav. 541.

(*y*) *Seton*, 604, *et seq.*

(*z*) *Exp. Jarman*, 4 Ch. D. 835, 838.

(*a*) *Re Field*, W. N. (1877), 244.

(*b*) *Daniell*, 1737.

order of course might have been obtained, the applicant will be ordered to pay the costs (c).

If an order of course is obtained where a special application was necessary, it will be discharged for irregularity (d).

(c) *Re Catlin*, 8 Beav. 121 ; *re Bignold*, 9 Beav. 269 ; *re Atkinson*, 26 Beav. 151 ; but see *re Hair*, 11 Beav. 96. *re Lewin*, 16 Beav. 608 ; *re Ilderton*, 33 Beav. 201 ; *re Yetts*, 33 Beav. 412 ; *re Bell*, 2 H. & M. 501.

(d) *Re Gedye*, 15 Beav. 254, 257 ;

## CHAPTER XXIV.

### AGREEMENTS AS TO COSTS.

WHERE an agreement is made between solicitor and client in respect of business done or to be done in any action, the amount payable under such agreement shall not be received by the solicitor, until such agreement has been examined and allowed by a taxing officer of a court having power to enforce the agreement. If it shall appear to such taxing officer that the agreement is not fair and reasonable, he may require the opinion of a Court or a judge to be taken thereon by motion or petition; and such Court or judge shall have power either to reduce the amount payable under such agreement, or to order the agreement to be cancelled and the costs to be taxed as if no such agreement had been made (a).<sup>1</sup>

The opinion of the Court cannot however be required until something is payable under the agreement (b). The agreement must be signed by the client (c). An agreement not to take costs out of any money awarded in the action is not within the section (d).

No action shall be brought upon any agreement between solicitor and client as to costs; but every question

Opinion of  
Court.

Enforcing or  
setting aside.

(a) Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 4.

R. 10 Ex. 200, 209.

(c) *Re Lewis*, 1 Q. B. D. 724.

(b) *Re Solicitors Act*, 1 Ch. D. 573; and see *Rees v. Williams*, L.

(d) *Jennings v. Johnson*, L. R. 8 C. P. 425.

respecting the validity or effect of any such agreement may be examined and determined, and the agreement may be enforced or set aside, without suit or action, on motion or petition of any person, or the representative of any person, a party to such agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid the costs, fees, charges, or disbursements, in respect of which the agreement is made, by the Court in which the business or any part thereof was done, or a judge thereof, or if the business was not done in any Court, then where the amount exceeds £50, by any superior Court or a judge thereof, or where the amount does not exceed £50, by the judge of a county court (*e*).

The section only applies to such part of the agreement as relates to costs; and only to cases where the work has been done and the money earned (*f*).

Upon any such motion or petition as aforesaid, if it shall appear that such agreement is in all respects fair and reasonable, the same may be enforced by the Court or judge by rule or order in such manner and subject to such conditions, if any, as to the costs of such motion or petition as such Court or judge may think fit. If the agreement shall not appear to be fair and reasonable, the same may be declared void, and the Court or judge may order the same to be delivered up to be cancelled, and may direct the costs to be taxed as if the agreement had not been made, and may make such order as to the costs of and relating to such motion or petition and the proceeding thereon as to the Court or judge may seem fit (*g*).

Re-opening  
agreement.

When the amount agreed for under any such agree-

(*e*) Solicitors Act, 1870, s. 8.

Ex. 200, 209.

(*f*) *Rees v. Williams*, L. R. 10

(*g*) Solicitors Act, 1870. s. 9.

ment has been paid by or on behalf of the client, or by any person chargeable with or entitled to pay the same, any Court or judge having jurisdiction to enforce the agreement (*h*) may, upon application by the person who has paid such amount, within twelve months after the payment thereof, if it appears to such Court or judge that the special circumstances of the case require the agreement to be re-opened, re-open the same, and order the costs to be taxed, and the whole or any part of the amount received by the solicitor to be repaid by him on such terms and conditions as to the Court or judge may seem just (*i*).

Where the agreement is made by the client in the capacity of guardian, or trustee, or committee of any person whose property will be chargeable with the amount payable thereunder or with any part of such amount, the agreement before payment shall be laid before the taxing-officer of a Court having jurisdiction to enforce the agreement (*j*), and such officer may disallow any part thereof, or may require the direction of the Court or a judge to be taken thereon by motion or petition; and if in any such case the client pay the amount or part thereof without the previous allowance of such officer or Court or judge, he shall be liable at any time to account to the person whose property is charged for the amount so charged; and if the solicitor accept payment without such allowance, the Court may order him to refund the amount so received (*k*).

If the solicitor die or become incapable to act before the agreement has been completely performed by him, any party thereto or the representatives of any such party

(*h*) Solicitors Act, 1870. See  
s. 8, *ante*, p. 218.  
(*i*) *Ibid.* s. 10.

(*j*) See s. 8, *ante*, p. 218.  
(*k*) *Ib.* s. 10.

Agreement by  
guardian, trustee,  
&c.

Death or in-  
capacity of  
solicitor.

may apply to the Court to enforce or set aside such agreement, so far as the same may have been acted upon, as if such death or incapacity had not happened; and the Court, if it shall deem the agreement fair and reasonable, may order the amount due in respect of the past performance of the agreement to be ascertained by taxation; and payment of the amount found due may be enforced in the same manner as if the agreement had been completely performed by the solicitor (*l*).

Change of  
solicitor.

If a client change his solicitor before the conclusion of the business to which the agreement relates, the solicitor shall be deemed to have become incapable to act within the meaning of the last section; and upon an order being made for taxation of the amount due for past performance the Court shall direct the taxing-master to have regard to the circumstance under which the change of solicitor took place; and upon such taxation the solicitor shall not be deemed entitled to the full amount of the remuneration agreed to be paid to him unless it shall appear that there has been no default, negligence, improper delay, or other conduct on his part affording reasonable ground to the client for such change of solicitor (*m*).

(*l*) Solicitors Act, 1870, s. 13.

(*m*) *Ibid.* s. 14.

## CHAPTER XXV.

### CHANGE OF SOLICITOR.

A PARTY cannot change his solicitor in any cause or matter without an order, to be obtained on motion or petition of course; and until such order is obtained and served, and notice thereof given to the Clerk of Records and Writs, the former solicitor will be considered the solicitor of the party (*a*). Cases where an order is necessary.

An order is also necessary where a solicitor desires to change his London agent in an action (*b*); and also where a person who has employed a solicitor, afterwards desires to prosecute the suit in person (*c*). So too where a plaintiff desires to make an application in the suit separately from his co-plaintiffs, an order for leave to appoint a solicitor for that purpose is necessary (*d*); and where the partnership is dissolved and it is desired to employ one of the late firm it seems usual to obtain an order appointing such member to be solicitor in the place of the firm (*e*).

But an order is not necessary where the solicitor enters into partnership subsequently to his appointment as Cases where no order is necessary.

(*a*) Cons. Ord. III., 3; *Davidson v. Leslie*, 9 Beav. 104; *Wright v. King*, 9 Beav. 161. As to Clerks of Records and Writs, see now 42 & 43 Vic. c. 78; and R. S. C. Dec. 1879. For form of petition, see *post*.

(*b*) Daniell, 1723.

(*c*) *Ibid.* 1724.

(*d*) *Ibid.*

(*e*) Braithwaite's Pr. 565; *Mutlebury v. Haywood*, 8 Jur. 1085.

solicitor to the party (*f*); nor where a party sues or defends in person and afterwards appoints a solicitor, though an order is in such cases sometimes obtained (*g*); nor is an order necessary where the solicitor or London agent dies, but notice should be given to the Clerk of Records and Writs and also to the solicitors of all the other parties to the action (*h*).

Where the costs of all parties had been paid, and the fund carried over to a separate account, it was held that a party might present a petition for payment out by a solicitor who had not been his solicitor in the cause without any order to change (*i*).

It seems that where by death or otherwise new parties are substituted, an order is not necessary, but notice should be given in manner above-mentioned (*j*).

Order will not  
provide for  
costs.

The rule at law as well as in equity, since the Judicature Act, is that an order to change a solicitor shall be made without any provision as to the payment of the first solicitor's costs (*k*).

Service.

Notice of the order must be given to the Clerks of Records and Writs by leaving it for entry in their books; but before doing so the order should be served on the solicitors of the other parties to the cause (*l*).

Order when  
discharged.

The order will, like any other order of course, be discharged as irregular, if any material facts are suppressed (*m*).

(*f*) *Griffiths v. Griffiths*, 2 Hare, 587; *Rawlinson v. Moss*, 9 W. R. 733.

(*g*) *Daniell*, 1725.

(*h*) *Ibid.* *Whalley v. Whalley*, 17 Jur. 254. As to Clerks of Records and Writs, see now 42 & 43 Vic. c. 78; R. S. C. Dec. 1879.

(*i*) *Waddilove v. Taylor*, 12 Jur. 598.

(*j*) *Seton*, 639.

(*k*) *Grant v. Holland*, 3 C. P. D. 180.

(*l*) *Braithwaite's Pr.* 563, 564. As to Clerks of Records and Writs, see now 42 & 43 Vic. c. 78; R. S. C. Dec. 1879.

(*m*) *Richards v. Scarborough Co.*, 17 Beav. 83; *Thomas v. Finlayson*, 19 W. R. 255; *Topping v. Searson*, 2 H. & M. 205.



An order is irregular if obtained by one or more of several co-plaintiffs, who have jointly retained a solicitor (*n*).

An order to change a solicitor is almost always obtained as of course; but in some cases, where there are special circumstances, a special order is necessary; and an order of course obtained in such cases will be discharged (*o*).

(*n*) *Re Norwich Society*, 22 W.  
R. 856; *Wedderburn v. Wedder-*  
*burn*, 17 Beav. 158.

(*o*) *Richards v. Scarborough Co.*,  
17 Beav. 83, 85; *Jenkins v.*  
*Bryant*, 3 Drew. 70.

## CHAPTER XXVI.

### CUSTODY OF INFANTS ACT, 1873.

Petition by  
mother.

UPON petition (by her next friend) of the mother of any infant under sixteen, the Court may order that the petitioner shall have access to such infant at such times and subject to such regulations as the Court shall deem proper, or may order that such infant shall be delivered to the mother and remain in or under her custody or control, or shall, if already in her custody or under her control, remain therein until such infant shall attain such age, not exceeding sixteen, as the Court shall direct; and may further order that such custody or control shall be subject to such regulations, as regards access by the father or guardian of such infant and otherwise, as the Court shall deem proper (a).

Discretion of  
the Court.

The Court has under this Act a discretionary power to remove children from the custody of their father or guardian; and in the exercise of such jurisdiction the interests of the children and the conduct of the parents will be taken into consideration (b).

When the  
Court will re-  
fuse to make  
an order.

Under the former Act (Talfourd's Act) the Court refused to interfere where a suit by the mother for the restitution of conjugal rights was pending, and where the chil-

(a) 36 & 37 Vic. c. 12, s. 1; which repealed Talfourd's Act (2 & 3 Vic. c. 54).

(b) *Re Taylor*, 4 Ch. D. 157;

and see *Warde v. Warde*, 2 Phil. 786; *Shillito v. Collett*, 8 W. R. 683; *re Halliday*, 17 Jur. 56; *re Besant*, 11 Ch. D. 508.

dren were out of the jurisdiction at the time of presenting the petition (c); nor would it make an order where the wife had left her husband without sufficient cause (d); nor would it remove children from the custody of their guardian where the mother was of extravagant habits, inexperienced in housekeeping, and without means (e); and where the mother was guilty of great misconduct, it would not even allow her access (f). The Court will not interfere where there is no misconduct on the part of the father (g); though it is not necessary that the wife should be entitled to obtain a divorce (h).

Where a husband had deserted his wife and was correspondent in a pending divorce suit, an order was made for delivery of the child to the mother, with liberty of access by the father and paternal grandparents, and with liberty to apply as to maintenance and education on the child's attaining the age of seven years (i).

Affidavits on either side are admissible on the hearing Practice. of the petition (k); and the Court has ordered substituted service where the husband was abroad (l). Under the former Act, the petition could, by leave of the Court, be presented *in forma pauperis* (m); and the order might be made *ex parte*, if the necessity of the case required it (n). In some cases the order has been accompanied by a restraint on the father from applying for a *habeas corpus* (o).

(c) *Re Taylor*, 11 Sim. 178; and see *re Winscom*, 2 H. & M. 540.

(d) *Re Taylor*, 11 Sim. 178.

(e) *Shillito v. Collett*, 8 W. R. 683.

(f) *Re Winscom*, 2 H. & M. 540.

(g) *Re Agar Ellis*, 10 Ch. D. 49, 60; and see *re Halliday*, 17 Jur. 56; *Warde v. Warde*, 2 Phil. 786;

*re Curtis*, 7 W. R. 474.

(h) *Exp. Bartlett*, 2 Coll. 661.

(i) *Re Taylor*, 4 Ch. D. 157.

(k) *Ib.*

(l) *Re Taylor*, 11 Sim. 178.

(m) *Exp. Hakevill*, 3 D. M. & G. 116.

(n) *Re Taylor*, 11 Sim. 178.

(o) *Warde v. Warde*, 2 Phil. 786, 792.

Costs.

Where the father, who was respondent to the petition, unsuccessfully opposed the application, he was ordered to pay the costs of the petition (*p*).

Enforcing  
agreement as  
to custody.

The Court will not enforce an agreement in a separation deed by the father to give up the custody of his children, if it will not be for their benefit to give effect thereto (*q*).

Infant felons.

The Court may, upon the application of any person who is willing to take charge of an infant who has been convicted of felony, assign the custody of such infant to such person; and if it shall think fit it may award costs against any applicant, to be paid to the parent or guardian who shall oppose such application (*r*).

(*p*) *Re Taylor*, 4 Ch. D. 157.  
See *re Besant*, 11 Ch. D. 508.

(*q*) 36 & 37 Vic. c. 12, s. 2; *re Besant*, 11 Ch. D. 508.

(*r*) 3 & 4 Vic. c. 90, s. 1. No fee is to be taken by any officer of the Court, and counsel and solicitor may be assigned, *ib.* s. 3.

## CHAPTER XXVII.

### INFANTS' SETTLEMENTS ACT.

EVERY male infant who has attained the age of twenty years, and every female infant who has attained the age of seventeen years, may, with the sanction of the Chancery Division, make a valid and binding marriage settlement, or contract for a settlement, of all or any part of his or her property (*a*). Sanction of Court.

The application for the sanction of the Court is obtained upon petition; and a petition is necessary though an action is pending (*b*). How obtained.

The petition should be presented by the infant, or his or her guardian; and if there is no guardian, the Court may require a guardian to be appointed or not, as it thinks fit (*c*). A petition presented by a next friend, without the infant's concurrence, was dismissed with costs (*d*). Who may petition.

The petition should be intitled in the matter of the infant, and of the Act. The allegations are similar to those inserted in petitions for leave to marry; and the petition prays that a proper settlement may be sanc- Form of petition.

(*a*) Infants' Settlement Act (18 & 19 Vic. c. 43), ss. 1, 4.

(*c*) 18 & 19 Vic. c. 43, s. 3.

(*b*) *Pearreth v. Marriott*, W. N. (1866), 48; and see *Harvey v. Clark*, 25 Beav. 7.

(*d*) *Re Potter*, L. R. 7 Eq. 484 but see *Wortham v. Pemberton*, 1 De G. & S. 644.

tioned, and that the infant may be at liberty to execute the same.

**Evidence.**

The petition, on being opened, is usually adjourned at once into Chambers, and a summons to proceed thereon is taken out (*e*). Evidence must be produced to show: 1. The age of the infant; 2. Whether the infant has any parent or guardian; 3. With whom, or under whose care, the infant is living, and if the infant has no parent or guardian, what near relations the infant has; 4. The rank and position in life of the infant and parents; 5. What the infant's property and fortune consist of; 6. The age, rank, and position in life, of the person to whom the infant is about to be married; 7. The property, fortune, and income of such person; 8. The fitness of the proposed trustees, and their consent to act (*f*). The proposals for the settlement must also be submitted to the Judge.

**Inquiry as to settlement.**

The Court only inquires into the propriety of the settlement, and not into the propriety of the marriage, unless the infant is a ward; although the inquiry as to the settlement often leads to an inquiry into all the circumstances of the proposed marriage (*g*).

**Proceedings in chambers.**

When the proposals for the settlement have been approved, the draft is prepared and settled, and the engrossment signed by the chief clerk in the same manner as in the case of a ward of Court (*h*). When the engrossment is signed, the chief clerk prepares and issues the minute of an order approving the settlement, and directing that the infant be at liberty to execute it. The order is then drawn up by the Registrar (*i*).

(*e*) Daniell, 1212; Seton, 766; Seton, 766.  
*re Olive*, 11 W. R. 819. (*h*) *Post*, p. 231.  
 (*f*) Regul. 8 Aug. 1857, r. 20. (*i*) Daniell, 1214.  
 (*g*) *Re Dalton*, 6 D. M. & G. 201

The Court cannot sanction a post-nuptial settlement (*j*), Post-nuptial settlement. unless made by a ward of Court (*k*).

The insertion of the usual name and arms clause in the settlement has been permitted (*l*).

(*j*) *Re Potter*, L. R. 7 Eq. 484, 485.

(*k*) *Powell v. Oakley*, 34 Beav. 575.

(*l*) *Re Williams*, 6 Jur. N. S. 1064. As to providing for children of a future marriage, see *Rudge v. Winnall*, 11 Beav. 98.

## CHAPTER XXVIII.

### MARRIAGE OF WARDS OF COURT.

#### *Petition for leave to Marry.*

Ward cannot marry without leave.

IF a ward of Court, whether male or female, is desirous of marrying, application should be made to the Court for an order sanctioning the proposed marriage, notwithstanding that the infant has a parent or guardian.

Application, how made.

The application is usually made by petition ; but when it is unnecessary to resort to the Infants' Settlements Act (a), and the infant's property is small, it may be made by summons ; and in such cases the settlement may often be effected by the order, without a deed (b).

Who may petition.

The petition is generally presented by the intended husband, whether he is a ward or not ; but if presented by a female ward, by her next friend or guardian, the husband should be made a co-petitioner (c). Where, however, the settlement cannot be effected except under the Infants' Settlements Act, it would seem that the petition must be presented by the infant or his or her guardian (d).

A settlement apart from the Infants' Settlements Act does not derive validity from the sanction of the Court (e).

(a) See *ante*, p. 225.

(b) Daniell, 1209 ; Seton, 755.

(c) *Lucas v. Dalziel*, W. N. (1879), 151 ; but see *re Graham*, W. N. (1870), 199 ; *re Yates*, 7

W. R. 711 ; *exp. Smith*, 22 W. R. 294.

(d) 18 & 19 Vic. c. 43, s. 3 ; and see cases in last note.

(e) 2 L. C. Eq. 697.



The petition should be intituled in the action or matter in which the infant is a ward of Court, and in the matter of the Infants' Settlement Act. Title of petition.

The petition should state the age of the ward ; the nature of his or her fortune ; the contemplated marriage ; the age, rank, position in life, and fortune of the person to whom the infant is proposed to be married ; and should pray for an inquiry whether the contemplated marriage is a proper one for the ward ; that, if so, proposals for a settlement may be received ; that a proper settlement may be approved ; and that, upon the execution thereof, the parties may be at liberty to intermarry (*f*). Form of petition.

The allegations in the petition must be supported by affidavit ; and the order will not be granted unless it appear that the marriage is suitable, and that the settlement proposed is proper ; but it is usual, on the petition being opened in Court, to adjourn it to Chambers without any order being then drawn up (*g*). Evidence.

In proceeding on the petition in Chambers, the propriety of the marriage must in the first place be shown ; the proposals for the settlement are then brought in and discussed ; and the matter is adjourned for a deed to be prepared to carry them into effect. The draft of such deed is prepared by the lady's solicitor, a copy is left at Chambers, and is there settled with the aid if necessary of the conveyancing counsel. The fitness of the proposed trustees, and their consent to act, must be shown ; and an approval of the deed is signed by the chief clerk in the usual manner (*h*). The chief clerk then prepares and Proceedings in chambers.

(*f*) Daniell, 1210 ; Seton, 755.  
For form of petition, see *post*.

(*g*) Daniell, 1206, 1210. Under special circumstances the marriage was at once sanctioned, the settle-

ment only being referred to Chambers, *exp. Smith*, 22 W. R. 294.

(*h*) As to settling deeds at Chambers, see Daniell, 1146.

signs the minute of an order approving the marriage and settlement, and directing that upon the execution thereof by the persons therein named, including the trustees (i), the parties be at liberty to intermarry. The minute is then transmitted to the Registrar, by whom the order is drawn up (j).

Payment out.

Where a fund in Court is to be paid out to the trustees of the settlement, or is to be applied in the infant's outfit, or in payment of costs, or otherwise, such payment may be directed to be made, upon the execution of the settlement and the solemnisation of the marriage being certified by the chief clerk, or being verified by affidavit if the order so direct (k).

Chief clerk's certificate.

Where the order directs the chief clerk to certify the execution of the settlement and the marriage, a copy of the order is left at Chambers, and a summons to proceed thereon is taken out; upon the return of which, the settlement and certificate of the marriage are produced, together with the Chancery Paymaster's certificate of the fund in Court, and an affidavit of the execution of the deed and of the identity of the persons named in the certificate of marriage. The chief clerk then makes his certificate; and payment out is obtained in the usual way (l).

*Petition to Restrain Marriage or Intercourse with Ward.*

Injunction to restrain marriage.

Where the Court has reason to suspect that a marriage without its sanction is intended, it will interfere by injunction to restrain the marriage and all communication

(i) *Adey v. Arnold*, 2 D. M. & G. 432; *Wynch v. Grant*, 2 Drew. 312.

(j) *Daniell*, 1210.

(k) Ch. Funds Rules, 1874, r. 11; *Seton*, 755.

(l) *Daniell*, 1211.

between the ward and the intended husband and wife; and if the guardian is suspected of connivance, it will remove the infant from his custody, and will restrain him from giving his consent to the marriage (*m*). The application in such cases is made by petition or motion, supported by affidavit (*n*). Hearsay evidence is admissible (*o*); and in an urgent case an injunction has been granted upon an *ex parte* application, on evidence of improper intercourse and connivance (*p*).

Application,  
how made.

### *Petition in Cases of Contempt.*

Where a person marries a ward without the Court's consent, such person, and all others concerned in aiding and abetting the act, may be committed for contempt, even though ignorant that the infant was a ward (*q*). In such cases an application may be made by motion or petition of the infant or guardian, or of any other person, for an inquiry as to the validity of the marriage, and the approval of a proper settlement (*r*). The application must be supported by affidavit; and the parties are usually ordered to attend personally, either in open Court, or in the Judge's private room, to answer the contempt (*s*). An application to commit a husband may be directed to stand over pending the approval and execution of a settlement. If the marriage is invalid, a valid marriage may be ordered (*t*).

Marriage with-  
out consent.

Proceedings \  
thereon.

Where the husband has been committed for con-  
Petition for  
discharge.

(*m*) Daniell, 1207; *Dawson v. Thompson*, 12 L. T. N. S. 178; *Shipbrook v. Hinchinbrook*, 2 Dick. 547.

(*n*) Daniell, 1207; Seton, 758.

(*o*) *Beard v. Travers*, 1 Ves. S. 313.

(*p*) Seton, 3rd ed. 728.

(*q*) *Eyre v. Countess of Shaftesbury*, 2 L. C. Eq. 633, 692; *More v. More*, 2 Atk. 157.

(*r*) Daniell, 1207; *Wilkinson v. Joughin*, 41 L. J. Ch. 234.

(*s*) Seton, 760, 762.

(*t*) *Bathurst v. Murray*, 8 Ves. 74; *re Murray*, 3 Dr. & War. 83.

tempt, he may apply to the Court by petition for his discharge (u) ; but he will not be discharged until a certificate that the marriage is valid has been produced, and a proper settlement has been approved and executed, and the payment by him of costs (x).

(u) *Nicholson v. Squire*, 16 Ves. 146 ; *Stevens v. Savage*, 1 Ves. j. 259. 154 ; but see *Jackson v. Mawby*, 1

(x) *Cox v. Bennett*, 22 W. R. Ch. D. 86, as to costs.  
819 ; *Field v. Brown*, 17 Beav.

## CHAPTER XXIX.

### MARRIAGE ACT.

THE person whose consent is required to the marriage of an infant, not being a widower or widow, is the father ; if the father is dead, the guardians or one of them ; if there are no guardians, the mother, if unmarried ; if there is no mother unmarried, the guardians appointed by the Court or one of them (a).

If the father is *non compos mentis* (b), or if any other person whose consent is required is *non compos mentis*, or is beyond the seas, or unreasonably withholds his consent, an application may be made to the Chancery Division by petition, and if the proposed marriage appear proper, a judicial declaration to that effect may be made, which shall be as effectual as if the requisite consent had been obtained (c).

The petition should show the case to be within the Act, and should pray for a declaration that the marriage is a fit and proper marriage within the meaning of the Act, and should be supported by affidavit. The Court may make such declaration without directing inquiries (d) ; or may direct inquiries to be made ; or may adjourn the petition to Chambers generally (e).

(a) 4 Geo. IV. c. 76, s. 16.

(b) The Act does not apply to a father beyond the seas or withholding his consent, *exp. J. C.*, 3 M. & C. 471.

(c) 4 Geo. IV. c. 76, s. 17.

(d) *Exp. Reibey*, 7 Jur. 589.

(e) Daniell, 1209 ; Seton, 767.

For cases under the Act where a forfeiture had been declared, see *Att.-Gen. v. Clements*, L. R. 12 Eq. 32 ; *Att.-Gen. v. Read*, 12 Eq. 38 ; *Att.-Gen. v. Akers*, W. N. (1872), 45.

## CHAPTER XXX.

### SIR SAMUEL ROMILLY'S ACT.

Proceedings  
under the Act  
may still be  
taken.

ALTHOUGH jurisdiction over charitable trusts has, by the Charitable Trusts Act, 1853, been given to a Chancery Judge at Chambers, the procedure by petition under Sir Samuel Romilly's Act has not been abolished (*a*).

By the latter Act it is provided that in every case of a breach of any trust, or supposed breach of any trust, created for charitable purposes, or whenever the direction or order of the Court shall be deemed necessary for the administration of any trust for charitable purposes, it shall be lawful for the Lord Chancellor, or Master of the Rolls, upon the petition of any two or more persons stating such complaint, and praying such relief as the nature of the case may require, to make such order therein, and with respect to costs as shall seem just (*b*). The application may also be made by the Attorney-General (*c*).

Scope of the  
Act.

Notwithstanding the wide terms of the section, the Act has been held to apply only to simple cases which arise between the trustees, and *cestuis que* trust of a charity (*d*); and even in such cases the Court ought to exercise a discretion as to whether the Act can be applied

(*a*) 16 & 17 Vic. c. 137, s. 43.

(*b*) 52 Geo. III. c. 101, s. 1. As to the appointment of new trustees of charities, see *Trustee Act*, *post*, p. 254.

(*c*) 16 & 17 Vic. c. 137, s. 43.

(*d*) *Re Manchester New Coll.*, 16 Beav. 610; *re Phillipotts*, 8 Sim. 381, 391; but see *re Upton Warren*, 1 M. & K. 410.

with advantage to the charity (*e*); and if it thinks the case requires it, the Court will decline to make an order on petition, and will direct the parties to proceed by information (*f*).

The Court, therefore, has no jurisdiction under the Act, <sup>Where the Act does not apply.</sup> where there are constructive trusts (*g*); or where the breach of trust is not clear and simple (*h*); or where there are adverse claims as to the objects of the charity (*i*); or adverse claims to the right to administer the charity property (*j*); or adverse claims to land (*k*); nor has it jurisdiction to set aside a lease of charity property (*l*); nor to transfer charity funds and amalgamate two charities (*m*); nor to determine in whom the legal estate is vested (*n*); or whether trustees have power to alter the rules and regulations of a school (*o*); nor has it jurisdiction to add to the number of trustees limited by the foundation (*p*); nor to direct accounts against persons who have received or misapplied the rents of the charity estate (*q*).

The Court has, however, jurisdiction under the Act to <sup>Where the Act applies.</sup> settle a scheme (*r*); to appoint new trustees (*s*); to direct a sale or exchange of charity lands, if obviously bene-

(*c*) *Re Manchester New Coll.*, 16 Beav. 610.

(*f*) *Att.-Gen. v. Devon*, 15 Sim. 193, 261.

(*g*) *Re Norris*, G. Coop. 295; *exp. Skinner*, 2 Mer. 453.

(*h*) *Corp. of Ludlow v. Greenhouse*, 1 Bl. N. R. 17.

(*i*) *Re Clarke*, 8 Sim. 34; *re Magdalen, &c.*, 9 Hare, 624.

(*j*) *Re West Retford*, 10 Sim. 101, 108.

(*k*) *Exp. Rees*, 3 V. & B. 10.

(*l*) *Exp. Skinner*, 2 Mer. 453.

(*m*) *Re Reading*, 10 Sim. 118.

(*n*) *Re Phillipotts*, 8 Sim. 381;

*re West Retford*, 10 Sim. 101.

(*o*) *Att.-Gen. v. East Retford*, 17 L. J. Ch. 450; and see *Att.-Gen. v. Bristol*, 14 Sim. 648.

(*p*) *Re Storey*, 9 L. J. Ch. 93.

(*q*) *Re St. Wenn*, 2 S. & S. 66; *re Hall*, 14 Beav. 115.

(*r*) *Re Royston Grammar Sch.*, 2 Beav. 228; *exp. Berkhamstead Grammar Sch.*, 2 V. & B. 134; *re Shrewsbury Sch.*, 1 Mac. & G. 324; and see *Att.-Gen. v. Stamford*, 1 Phil. 749.

(*s*) *Bignold v. Springfield*, 7 Ch. & Fin. 71, 74; *re Fowey*, 4 Beav. 225; *re Rolles*, 10 Hare, App. 39.

ficial (*t*); to reinstate a schoolmaster, if improperly dismissed (*u*); or where parishes have been divided, to apportion the charitable gifts between them (*v*); or to decide a simple question of law (*w*); and generally to administer charitable trusts in simple cases (*x*). The Court has also jurisdiction under the Act, with respect to the internal regulation of charities (*y*), unless there is a visitor, and the matter belongs exclusively to his cognizance (*z*).

Application,  
how made.

Applications under the Act are made by petition (*a*); but when the jurisdiction has been once attracted by petition, a subsequent order may be made upon motion (*b*).

Sanction of  
Commis-  
sioners.

Except where the petition is presented by the Attorney-General, or in a pending suit or matter, the sanction of the Charity Commissioners must first be obtained (*c*); but their sanction is not necessary to a petition, which merely deals with a fund paid into Court, under the Trustee Relief Act, or the Lands Clauses Consolidation Act (*d*).

Who may peti-  
tion.

The petition may be presented either by the Attorney-General acting *ex officio* (*e*), or by any two or more persons,

(*t*) *Re Parke*, 12 Sim. 329; *re Newton*, 12 Jur. 1011; *re Ecclesall*, 16 Beav. 297; *Mildmay v. Methuen*, 14 Beav. 121, *n.*; *re Ashton*, 22 Beav. 288; but see *re Suir Island*, 3 Jon. & Lat. 171.

(*u*) *Re Phillips*, 9 Jur. 959; and cases cited in 14 Beav. 121, *n.*

(*v*) *Re West Ham*, 2 De G. & S. 218.

(*w*) *Re Upton Warren*, 1 M. & K. 410.

(*x*) *Re Manchester New Coll.*, 16 Beav. 610; *re Hall*, 14 Beav. 115; *re Phillipotts*, 8 Sim. 381, 391.

(*y*) *Re Rugby*, 1 Beav. 457; *re Shrewsbury School*, 1 Mac. & G. 324, 331; *re Manchester New Coll.*,

16 Beav. 610.

(*z*) *Att.-Gen. v. Clare Hall*, 3 Atk. 674; *exp. Berkhamstead*, 2 V. & B. 134, 144; *Thomson v. Univ. of London*, 10 Jur. N. S. 669.

(*a*) 52 Geo. III. c. 101, s. 1.

(*b*) *Re Slewing*, 3 Mer. 707; *exp. Friendly Society*, 10 Ves. 287; *re Chipping Sodbury*, 5 Sim. 510.

(*c*) 16 & 17 Vic. c. 137, ss. 18, 20; *exp. Watford*, 2 Jur. N. S. 1045.

(*d*) *Re St. Giles*, 25 Beav. 313; *re Lister*, 6 D. M. & G. 184. See *re Poplar School*, 8 Ch. D. 543.

(*e*) 16 & 17 Vic. c. 137, s. 43.



having a direct interest in the charity (*f*), but two of such persons must be individuals (*g*).

The Attorney-General, or, if that office is vacant, the Solicitor-General, must signify his allowance or approbation of the petition by affixing his signature thereto (*h*). Sanction of  
Attorney-  
General.

Before such allowance can be obtained, the petition must be signed by the petitioners in the presence of their solicitor, and their signatures must be attested by him (*i*). A certificate must also be written on the petition and signed by counsel, to the effect that in his opinion the petition is one proper to be presented under the Act (*k*). It is presumed that this is still necessary notwithstanding the Judicature Act (*l*). The solicitor for the petitioners must likewise certify on the petition that the petitioners are able to answer the costs of the application. Upon the petition so signed and certified being left with the Attorney-General's clerk, he will obtain the Attorney-General's signature thereto in testimony of his approbation (*m*). Petition to be  
signed.

As a general rule, the petition ought to be served upon all persons whose interests will in any manner be affected by the order sought to be obtained (*n*); but if the Attorney-General has certified his allowance, the petition need not be served upon him (*o*); and unless the petition is signed by the Attorney-General and properly served, any order made upon it will be a nullity (*p*). Service.

(*f*) *Corp. of Ludlow v. Greenhouse*, 1 Bl. N. R. 17, 91; *re Bedford*, 2 Swanst. 518.

(*g*) *Re London, Brighton, &c.*, 18 Beav. 608.

(*h*) 52 Geo. III. c. 101, s. 2; *exp. Skinner*, 2 Mer. 453; *re Warwick*, 1 Phil. 559.

(*i*) 52 Geo. III. c. 101, s. 2.

(*k*) Daniell, 1763.

(*l*) See R. S. C. Ord. XIX. 4.

(*m*) Daniell, 1763.

(*n*) *Exp. Rees*, 3 V. & B. 10; *exp. Seagears*, 1 V. & B. 96; *exp. Fowlser*, 1 J. & W. 70.

(*o*) *Re Warwick*, 1 Phil. 559.

(*p*) *Att.-Gen. v. Green*, 1 Jac. & W. 305; but see *Att.-Gen. v. Devon*,

Parties who have not been served are in strictness not entitled to be heard (*q*).

Proceedings  
in chambers.

If a scheme is directed to be settled, or any other proceedings are directed to be taken in Chambers, the petitioners and respondents have a right to attend there; and the Attorney-General ought also to attend, as proceedings taken in his absence are irregular (*r*). Under the present practice, the Attorney-General is always directed to be served with the summons to proceed on the order (*s*). Upon the return of the summons to proceed, directions will be given as to the manner in which the inquiries are to be prosecuted, the evidence to be adduced, and the parties to attend (*t*). A concise statement showing the objects and property of the charity is sometimes directed to be brought in, and substantiated by affidavit or other evidence (*u*).

Where a scheme is directed, it is usually prepared by the petitioners, and submitted by them to the Attorney-General. A copy of the scheme showing any alterations not agreed upon between the parties is then left at Chambers, and the scheme is then settled by the Judge, either in Chambers or on adjournment into Court (*x*). When settled, a fair copy is signed by the Judge, and filed. The order usually refers to the scheme as filed; and in this manner, the expense of setting out the whole scheme in the order is avoided (*y*).

When the inquiries are answered, an order may be

15 Sim. 193; *re Godmanchester School*, 15 Jur. 833.

(*q*) *Att.-Gen. v. Devon*, 15 Sim. 259.

(*r*) *Corp. of Ludlow v. Greenhouse*, 1 Bl. N. R. 17, 65; *Att.-Gen. v. Stamford*, 1 Phil. 737, 749.

(*s*) *Re Hanson*, 9 Hare, App. 54.

(*t*) Cons. Ord. XXXV. 16.

(*u*) Daniell, 1765.

(*x*) *Re Hanson*, 9 Hare, App. 54; *re Wyersdale*, 10 Hare, App. 74; Daniell, 1765.

(*y*) *Re Conyers School*, 10 Hare, App. 5.

made in chambers; but if the further consideration of the petition has been adjourned, the chief clerk will make his certificate, and the petition will be brought on again in Court for consequential directions (z).

Where a petition has been presented improperly, as, <sup>Costs.</sup> for instance, in a difficult and complicated case, it will be dismissed with costs (a).

Where a party is personally interested in the charity, he will be entitled to his costs of attendance at chambers; but if he has no individual interest, he will attend at his own expense (b).

An appeal may be presented to the House of Lords <sup>Appeal.</sup> within two years from the time when the order is passed and entered (c). No appeal from an order made by the Master of the Rolls lies to the Court of Appeal (d). An appeal cannot be brought by a person who did not appear in the Court below, even though he is an interested party (e).

### *Acts Extending Romilly's Act.*

The summary mode of procedure by petition under Sir Samuel Romilly's Act has been extended, by subsequent Acts, to other cases relating to charities. These Acts are the Grammar Schools Act (f), the Church Building Acts Amendment Act (g), the Municipal Corporations Act (h), and the Burials Act (i).

Petitions presented under any of these Acts should be

(z) Daniell, 1765.

(a) *Re Phillipotts*, 8 Sim. 381.

(b) *Re Shrewsbury School*, 1 Mac. & G. 324.

(c) 52 Geo. III. c. 101, s. 1.

(d) *Re Royston School*, 2 Bcav. 232, n.; *re Slewringe*, 3 Mer. 707.

(e) *Corp. of Ludlow v. Greenhouse*, 1 Bl. N. R. 17.

(f) 3 & 4 Vic. c. 77.

(g) 8 & 9 Vic. c. 70.

(h) 5 & 6 Wm. IV. c. 76.

(i) 15 & 16 Vic. c. 85, s. 29; and see 16 & 17 Vic. c. 134.

intituled in the matter of 52 Geo. III., c. 101, as well as in the matter of the particular Act under which they are presented (*k*).

*Special Acts.*

Petitions are also sometimes presented to the Chancery Division under special Acts relating to particular charities. Under such Acts the Court could not formerly give costs, unless specially authorised to do so by the particular Act (*l*). Where the jurisdiction given by the particular Act, and that given by Sir Samuel Romilly's Act differ, the petition cannot proceed under both Acts, but the petitioners must elect under which Act they will proceed (*m*).

*Charitable Trusts Act, 1853.*

Applications under the Charitable Trusts Act, 1853, for the appointment or removal of any trustee, or for any other relief relating to a charity of which the income exceeds £30, are made to the Judge at chambers by summons; but the Judge may, if he shall think fit, direct a petition to be presented (*n*).

The Chancery Division has an appellate jurisdiction in the case of orders made under the Act by a County Court, or by the Commissioners. The appeal is brought by petition of appeal (*o*). Proceedings under this Act are expressly excepted from the County Court Rules, 1875.

(*k*) *Re West Ham*, 2 De G. & S. 218, 222.

(*l*) *Re Bedford*, 2 Swanst. 532; but see *exp. Mercers' Co.*, 10 Ch. D. 481.

(*m*) *Re Bedford*, 2 Swanst. 470, 518.

(*n*) 16 & 17 Vic. c. 137, s. 28.

(*o*) See Daniell, 1772-1775, as to the practice on these appeals.

## CHAPTER XXXI.

### THE TRUSTEE ACTS, 1850, 1852.

UNDER these Acts the Court (*a*) has power to appoint new trustees; to make vesting orders of lands, stock, and choses in action; or in lieu of such vesting order to appoint some person to convey or transfer. But the Court has no jurisdiction under the Acts to decide a disputed question of title (*b*).

#### *Vesting Orders of Land.*

A vesting order may be made by the Judges in *In Lunacy*. Lunacy (*c*) whenever a lunatic or person of unsound mind is seised or possessed of any lands, or is entitled to a contingent right in any lands upon any trust, or by way of mortgage (*d*). The order must be made in Lunacy (*e*), unless the trustee of unsound mind is an infant, or out of the jurisdiction, in which cases it may be made in Chancery only (*f*).

A vesting order may be made by the Chancery *In Chancery*. Division in any of the following cases, viz. :

(*a*) As to which Court must make the order, see *post*, p. 257.

(*b*) *Re Draper*, 9 W. R. 805.

(*c*) As to the jurisdiction in lunacy, see Jud. Act, 1873, s. 17 (3); Jud. Act, 1875, s. 7. Seton, 518.

(*d*) Trustee Act, 1830, ss. 3, 4-

See s. 52, and 25 & 26 Vic. c. 86 : as to proceedings where the lunacy is disputed.

(*e*) *Re Mason*, L. R. 10 Ch. 273; and see *re Pearson*, 5 Ch. D. 982.

(*f*) *Re Arrowsmith*, 4 Jur. N. S. 1123; *re Gardner*, 10 Ch. D. 29.

Infant.

1. Where an infant is seised or possessed of any lands upon any trust, or by way of mortgage; or is entitled to any contingent right in any lands upon any trust, or by way of mortgage (*g*). An order may be made under this section though the infant trustee is also of unsound mind (*h*).

Out of jurisdiction, or cannot be found.

2. Where a trustee is out of the jurisdiction (*i*), his absence not being merely temporary (*k*); or where he cannot be found (*l*); and whether he is a sole or joint trustee (*m*); and whether entitled in possession or contingently (*n*).

Uncertain survivorship.

3. Where it is uncertain which of two or more trustees was the survivor (*o*).

Living or dead.

4. Where it is not known whether the trustee last known to have been seised or possessed is living or dead (*p*).

No heir.

5. Where any person seised of any lands upon any trust shall have died intestate as to such lands without an heir, or shall have died and it shall not be known who is his heir or devisee (*q*). This section does not apply to leaseholds (*r*).

(*g*) Trustee Act, 1850, ss. 7, 8. As to the effect of the order where the infant is tenant in tail, see *Powell v. Matthews*, 1 Jur. N. S. 973.

(*h*) *Re Arrowsmith*, 4 Jur. N. S. 1123.

(*i*) Trustee Act, 1850, s. 9. *Stillwell v. Ashley*, Seton, 520.

(*k*) *Hutchinson v. Stephens*, 5 Sim. 499.

(*l*) Trustee Act, 1850, s. 9; *Lechmere v. Clamp*, 31 Beav. 578.

(*m*) Trustee Act, 1850, s. 10. A joint mortgagee is not within the section unless he is also a trustee;

*re Osborn*, L. R. 12 Eq. 392; *re Walker*, 3 Ch. D. 209; see *re Templer*, 4 N. R. 494, as to co-heirs of a mortgagee.

(*n*) Trustee Act, 1850, ss. 11, 12.

(*o*) *Ibid.* s. 13.

(*p*) *Ibid.* s. 14.

(*q*) Trustee Act, 1850, s. 15; but see 38 & 39 Vic. c. 87, s. 48; *Christie v. Ovington*, 1 Ch. D. 279; *Morgan v. Swansea, &c.*, 9 Ch. D. 582.

(*r*) *Re Mundell*, 8 W. R. 683; *re Harvey*, Seton, 520; but leaseholds may be vested under s. 34: see *re Dalglish*, 4 Ch. D. 143.

6. Where the Court is satisfied that a trustee has wil- Refusal to convey.  
fully refused or neglected to convey or assign the land or  
to release a contingent right for the space of twenty-eight  
days after a demand made by a person entitled to require  
such conveyance or assignment (s). The refusal need not  
be in writing, nor does the tender of a deed appear to  
be necessary (t). A married woman is capable of re-  
fusing (u); and a divorced woman may obtain an order  
against her husband (v). The refusing trustee need not  
be served (w).

7. Where lands are subject to a contingent right in an Unborn per-  
sons.  
unborn person or class of unborn persons who upon  
coming into existence would in respect thereof become  
seised or possessed of such lands upon any trust, the  
Court may make an order releasing such lands from such  
contingent right, or may vest in any person or persons  
the estate or estates which such unborn persons would  
upon coming into existence be seised or possessed of in  
such lands (x).

8. Where an order for sale has been made by the Where an order  
for sale has  
been made.  
Court in any action or proceeding, a vesting order may  
be made in lieu of a conveyance (y). The order under  
this section may be made in chambers (z).

9. Whenever the Court appoints a new trustee or new Where new  
trustees have  
been ap-  
pointed.  
trustees, it may by the same or any subsequent order  
vest the lands subject to the trust in the person or per-  
sons who upon the appointment shall be the trustee or

(s) Trustee Extension Act, 1852,  
s. 2.

(t) See Lewin, 894, n. (c).

(u) *Rowley v. Adams*, 14 Beav.  
130.

(v) *Knight v. Knight*, W. N.  
(1866), 114.

(w) *Re Crowe*, L. R. 13 Eq. 26 :  
where an order was made against a  
mortgagor of copyholds by covenant

to surrender.

(x) Trustee Act, 1850, s. 16.

"Unborn persons" includes persons  
who, though born, cannot be ascer-  
tained : *Basnett v. Moxon*, L. R.  
20 Eq. 182.

(y) Trustee Extension Act, 1852,  
s. 1.

(z) Cons. Ord. XXXV. 1 (4).

trustees (a). An order may be made under this section vesting the lands in persons who are already trustees (b); or in the new and continuing trustees (c). The word "lands" in this section includes leaseholds (d). A vesting order may be made, though there is no incapacity in the person seised of the legal estate to convey to the new trustee (e).

Mortgagee.

10. Where a mortgagee dies without having taken possession, and the mortgage debt has been paid off, or the person entitled to such debt consents to a reconveyance, the Court may make a vesting order in the following cases, viz.: Whenever the heir or devisee of such mortgagee is out of the jurisdiction, or cannot be found, or refuses to convey; or when it is uncertain which of his devisees was the survivor; or when it is uncertain whether such survivor or the heir is living or dead; or when there is no heir, or when it is not known who is the heir or devisee (f).

If the mortgagee had taken possession, his executors may obtain an order under ss. 9 or 15, vesting in them the legal estate which has descended to the heir (g).

But now, by the Vendor and Purchaser Act, 1874 (h), the legal personal representatives of a mortgagee can reconvey the legal estate.

Vendor.

A vendor or his heir may upon petition be declared a trustee, and the legal estate may be vested in the purchaser, provided there be no dispute as to the title or contract (i), and provided the contract be executed, and

(a) Trustee Act, 1850, s. 34.

(b) *Re Clay*, W. N. (1873), 129;  
*re Dalglish*, 4 Ch. D. 143; *re*  
*Harford*, 13 Ch. D. 135; 41 L. T.  
382.

(c) *Smith v. Smith*, 3 Drew. 72;  
*re Fisher*, 1 W. R. 505; *re Bute*,  
Johns. 15.

(d) *Re Mundell*, 8 W. R. 683;

*re Dalglish*, 4 Ch. D. 143.

(e) *Re Manning*, Kay, App. 28.

(f) Trustee Act, 1850, s. 19;  
Lewin, 874.

(g) *Re Skitter*, 4 W. R. 791; *re*  
*Keeler*, 11 W. R. 62.

(h) 37 & 38 Vic. c. 78, s. 4.

(i) *Re Lowry*, L. R. 15 Eq. 78;  
*Warrender v. Foster*, Seton, 517;



not merely executory (*l*). But where the right is not clear, it must first be established in a suit (*m*).

A vendor of copyholds who has covenanted to surrender and received the purchase-money is a trustee, and a vesting order may be made upon petition (*n*).

Vesting orders may be made of easements (*o*); of Easements, &c. rent-charges (*p*); and *semble*, of mere powers (*q*).

Leaseholds may be vested under s. 34, but not under Leaseholds. s. 15 (*r*).

The Court will make a vesting order under the Act, when expense will be thereby saved, even though there is no impediment to a conveyance (*s*). And such orders are frequently made.

Where a vesting order of copyholds is made with the Copyholds. consent of the lord, the lands will vest without any surrender or admittance; and where a person is appointed to convey copyholds, the lord is bound, upon the usual payments, to make admittance to the lands (*t*).

A vesting order can, however, be made without the consent of the lord, but if made without such consent it will not affect the lord's interests, nor will it have the effect of surrender and admittance (*u*).

The lord should not be served (*x*); nor should he

*re Taylor*, W. N. (1866), 5; and see *re Angelo*, 5 De G. & S. 278.

(*l*) *Re Cuming*, L. R. 5 Ch. 72.

(*m*) *Re Carpenter*, Kay, 418; *re Weeding*, 4 Jur. N. S. 707; *re Faulder*, W. N. (1866), 83.

(*n*) *Re Cuming*, *supra*; *re Col-lingwood*, 6 W. R. 536.

(*o*) *Re Taylor*, W. N. (1866), 5.

(*p*) *Re Harrison*, Seton, 516.

(*q*) *Re Boyce*, 4 D. J. & S. 205; Seton, 515; Morgan, 81.

(*r*) *Re Dalgleish*, 4 Ch. D. 143 *re Mundell*, 8 W. R. 683.

(*s*) *Re Manning*, Kay, App. 28; *re Mundell*, *supra*; *Davis v. Chanter*, 6 W. R. 416; *Hancox v. Spittle*, 3 Sm. & G. 478.

(*t*) Trustee Act, 1850, s. 28. For form of order appointing a person to convey, see *re Hey*, 9 Hare, 221.

(*u*) *Paterson v. Paterson*, L. R. 2 Eq. 31; *re Flitcroft*, 1 Jur. N. S. 418; but see *re Howard*, 3 W. R. 605; *Cooper v. Jones*, 2 Jur. N. S. 69.

(*x*) *Paterson v. Paterson*, *supra*.

*x Re Shells Gold & Brooman  
Chetty F. 12/12/05  
June 14/12/05*

## TRUSTEE ACT.

appear to consent, a verified certificate of his consent being sufficient (y).

Property not  
in England.

The powers given to the Chancery Division extend to lands and personal estate in all the Queen's dominions and colonies, except Scotland (z).

The powers given to the Judges in Lunacy extend to all the Queen's dominions and colonies, except Scotland and Ireland (a); and the powers given by the Act to the Judges in Lunacy shall and may, with respect to lands and personal estates in Ireland, be exercised by the Irish Judges in Lunacy (b).

Notwithstanding the above express provisions, it has recently been held that where a trustee of property consisting partly of land in Ireland becomes lunatic, an order may be made by the English Judges on a petition instituted in Lunacy and the Chancery Division, appointing new trustees, and vesting the Irish land in them (c).

*Vesting Stock or Choses in Action.*

*In Lunacy.*

An order vesting the right to transfer stock, or receive dividends, or sue for a chose in action, may be made by the Judges in Lunacy whenever the trustee or mortgagee of such stock or chose in action is a lunatic or of unsound mind, whether such trustee or mortgagee is a sole or joint trustee or mortgagee (d).

A similar order may be made where stock is standing

(y) *Ayles v. Cox*, 17 Beav. 584.

(z) Trustee Act, 1850, s. 54; *re Schofield*, 24 L. T. 322; *re Groom*, 11 L. T. N. S. 336.

(a) Trustee Act, 1850, s. 56; *re Davies*, 3 Mac. & G. 278.

(b) Trustee Act, 1850, s. 57.

(c) *Re Lamotte*, 4 Ch. D. 325; and see *re Hodgson*, 11 Ch. D. 888.

(d) Trustee Act, 1850, s. 5. The lunatic husband of a married woman trustee is a trustee within this section: *re Wood*, 3 D. F. & J. 125. The order should not vest the stock in the persons beneficially entitled, except as trustees: *re Currie*, 10 Ch. D. 93.

in the name of a deceased person whose personal representative is a lunatic or of unsound mind, or where a chose in action is vested in a lunatic or person of unsound mind as the personal representative of a deceased person (e).

Vesting orders of stock or choses in action may be *In Chancery*, made by the Chancery Division in the following cases, viz.:

1. Where a sole or joint trustee of any stock is an Infant, infant (f).

2. Where a joint or sole trustee of any stock or chose in action is out of the jurisdiction, or cannot be found, or it is uncertain whether he is living or dead (g). Abroad, or cannot be found.

3. Where a sole or joint trustee of any stock or chose in action refuses to transfer the stock, or to receive the dividends, or to sue for the chose in action or any interest in respect thereof, for the space of twenty-eight days after the request in writing of the person absolutely entitled (h). Refusal to transfer.

4. Where stock is standing in the sole name of a deceased person whose personal representative is out of the jurisdiction, or cannot be found, or where it is uncertain whether such personal representative is living or dead, or such personal representative shall neglect or refuse to transfer the stock or receive the dividends for twenty-eight days after a written request by the person absolutely entitled (i).

(e) Trustee Act, 1850, s. 6.

(f) Trustee Extension Act, 1852, s. 3. See *Sanders v. Homer*, 25 Beav. 467; *Gardner v. Cowles*, 3 Ch. D. 304: where the infant was beneficially entitled to stock standing in his own name.

(g) Trustee Act, 1850, s. 22. See *re Dennison*, 2 D. M. & G. 900; *re Ryan*, 9 W. R. 137: where the right to the stock was vested in the beneficiaries.

(h) Trustee Act, 1850, ss. 23, 24; *re Hartnall*, 5 De G. & S. 111. One of several trustees is not the person absolutely entitled, nor is a tenant for life, where the application is for a transfer: *Mackenzie v. Mackenzie*, 5 De G. & S. 338; and see *re Ellis*, 24 Beav. 426.

(i) Trustee Act, 1850, s. 25. An order under this section was made against the executrix of a last surviving trustee who had not proved

5. Where any person shall neglect or refuse to transfer stock or receive dividends, or sue for a chose in action, for twenty-eight days after an order of the Chancery Division for that purpose has been served upon him (*j*). An order under this section was made on motion where a previous order had been made appointing new trustees (*k*).

6. Where an order has been made appointing new trustees (*l*).

Form of order  
vesting stock.

In accordance with the wording of the different sections of the Acts, vesting orders of stock and choses in action are absolute (*m*); but the Court may give directions as to the manner in which the right to any stock or chose in action vested under the Act shall be exercised (*n*). Thus, although the Court has no jurisdiction under the Act to order direct payment into Court (*o*), it may direct the person in whom it has vested a fund to pay it into Court under the Trustee Relief Act (*p*).

### *Appointing Person to Convey, &c.*

Whenever an order may be made under the Act vesting any lands or releasing the contingent right of any unborn person, the Judges in Lunacy, or the Chancery Division, as the case may be, may, if deemed more convenient, make an order appointing a person to convey or assign such lands or release such contingent right; and wherever an order vesting the right to transfer stock

and who had neglected to transfer for 28 days: *re Ellis*, 24 Beav. 426.

(*j*) Trustee Extension Act, 1852, s. 4. The service should be personal: *Coles v. Benbow*, W. N. (1873), 60.

(*k*) *Re Holbrook*, 8 W. R. 3; and see *Skynner v. Felichet*, 9 W. R. 191.

(*l*) Trustee Act, 1850, s. 35; *re*

*M'Carthy*, 1 L. R. Ir. 16.

(*m*) As to the effect of vesting orders of stock and choses in action, see Trustee Act, ss. 26, 27; Trustee Extension Act, s. 6.

(*n*) Trustee Act, 1850, s. 31.

(*o*) *Re Parby*, 29 L. T. 72.

(*p*) *Re Thornton*, 9 W. R. 475; *re Draper*, 9 W. R. 805; and see *Gardner v. Cowles*, 3 Ch. D. 304.

could be made under the Act, the Judges in Lunacy, or the Chancery Division, as the case may be, may, if it be deemed more convenient, make an order directing the Bank or other company or society at once to transfer or join in transferring the stock to the person or persons named in the order (*q*).

Under this section an order has been made appointing a beneficiary to be trustee, and directing the fund to be transferred into his name (*r*).

Where stock is standing in the names of two persons one of whom is out of the jurisdiction, it is necessary to add a direction for the person within the jurisdiction to join in the transfer (*s*).

A person may also be appointed to surrender copyholds (*t*).

### *Appointment of New Trustees.*

Whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, the Chancery Division may make an order appointing such new trustee or trustees, either in substitution for or in addition to any existing trustee or trustees, and whether there be any existing trustee or not (*u*); and by the same or any subsequent order the Court may vest any lands, stock, or choses in action in such new trustee or trustees (*x*).

When new trustees will be appointed.

(*q*) Trustee Act, 1850, s. 20. *Wilks v. Groom*, 6 D. M. & G. 205; *Shepherd v. Churchhill*, 25 Beav. 21. For form of order, see *Hubbard v. Hubbard*, 2 H. & M. 38, 41; *Hancox v. Spittle*, 3 Sm. & G. 478; Seton, 507.

(*r*) *Re Dickson*, W. N. (1872), 223. See *Coles v. Benbow*, W. N. (1873), 60; *re Currie*, 10 Ch.D. 93.

(*s*) Seton, 521.

(*t*) Trustee Act, 1850, s. 28.

(*u*) Trustee Act, 1850, s. 32; Trustee Extension Act, 1852, s. 9. For cases under the last Act, see *Davis v. Chanter*, 4 Jur. N. S. 272; *re Herbert*, 8 W. R. 272; *Paterson v. Paterson*, L. R. 2 Eq. 31.

(*x*) Trustee Act, 1850, ss. 34, 35. *Ante*, pp. 245, 250.

Lunacy.

In every case in which the Judges in Lunacy may make a vesting order, they may also make an order appointing a new trustee or new trustees without its being necessary that the order should be made in Chancery as well as in Lunacy (*y*).

## No estate.

New trustees may be appointed where the trust is merely an office without any estate (*z*).

## Creditors' deed.

New trustees may be appointed of a creditors' deed, registered under the Bankruptcy Act, 1861, by the Chancery Division (*a*); or if the trustee has become of unsound mind, by the Judges in Lunacy (*b*).

## Bankrupt.

The Court cannot on petition under the Act remove a trustee who is able and willing to act (*c*); unless he is a bankrupt, in which case it is the duty of the Court to remove him, if he has trust money to receive or deal with, which he can easily misappropriate (*d*). The Court can also remove a trustee who has compounded with his creditors, although he has paid the composition (*e*). The petition in such cases should also be intituled in the matter of the Bankruptcy Act, 1869.

## Donee of power.

The Court will not appoint new trustees where there is a power, and the donee is willing to exercise it, though it is alleged the power will be improperly exercised (*f*); but where the donee is a lunatic, or of unsound mind, a new trustee may be appointed in Chancery (*g*).

(*y*) Trustee Extension Act, 1852, s. 10, *post*, p. 257.

(*z*) *Re Boyce*, 4 D. J. & S. 205; Seton, 540.

(*a*) *Re Price*, L. R. 6 Eq. 460; *re Bache*, W. N. (1868), 223; *re Raphael*, L. R. 9 Eq. 233.

(*b*) *Re Donisthorpe*, L. R. 10 Ch. 55.

(*c*) *Re Hadley*, 5 De G. & S. 67; *re Blanchard*, 3 D. F. & J. 131; *re Hodson*, 9 Hare, 118.

(*d*) *Re Barker*, 1 Ch. D. 43; *re Adams*, 12 Ch. D. 634.

(*e*) *Re Adams*, 12 Ch. D. 634.

(*f*) *Re Hodson*, 9 Hare, 118; but see *re Humphry*, 1 Jur. N. S. 921.

(*g*) *Re Sparrow*, L. R. 5 Ch. 662; *re Heaphy*, 18 W. R. 1070; *re Vickers*, W. N. (1876), 178; but see Lunacy Regulation Act, 1853, s. 137; *re Parker*, 32 Beav. 580.

The Court has jurisdiction to appoint trustees under the Act where there have never been any trustees, provided the heir of the testator is before the Court (*h*). Never were any trustees.

The Court will not appoint a trustee in the place of one who has gone abroad, if his absence is merely temporary (*i*). But a new trustee will be appointed in the place of a trustee permanently residing abroad, and the order may be made without his consent (*k*). Trustee abroad.

Where an infant has been appointed trustee, the Court will generally appoint a new trustee in his place (*l*); but the order should be without prejudice to any application by the infant to be restored to the trust upon his coming of age (*m*). Infant trustee.

Where there is great difficulty in obtaining administration to a deceased or last surviving trustee, the Court considers it "expedient" to appoint new trustees (*n*). Difficulty in obtaining administration.

So where it is doubtful whether the power to appoint new trustees in the settlement applies to the particular case (*o*); or where the power does not apply in the events which have happened (*p*). Where power does not apply.

The Court will re-appoint trustees who have been already appointed under the power (*q*); and where a vesting order is also asked for, and expense would be Re-appointing old trustees.

(*h*) *Re Smirthwaite*, L. R. 11 Eq. 251; *re Davis*, L. R. 12 Eq. 214; *re Gillett*, W. N. (1876), 251; *Dodkin v. Brunt*, L. R. 6 Eq. 580.

(*i*) *Re Mais*, 16 Jur. 608; *re Moravian Society*, 26 Beav. 103, n.; *Withington v. Withington*, 16 Sim. 104.

(*k*) *Re Bignold*, L. R. 7 Ch. 223; *Mennard v. Welford*, 1 Sm. & G. 426.

(*l*) *Re Porter*, 2 Jur. N. S. 349; *re Gartside*, 1 W. R. 196.

(*m*) *Re Shelmerdine*, 33 L. J. Ch. 474.

(*n*) *Davis v. Chanter*, 4 Jur. N. S. 272; *re Matthews*, 26 Beav. 463; and see *re Davis*, L. R. 12 Eq. 214.

(*o*) *Re Woodgate*, 5 W. R. 448; *re Armstrong*, *ib.*

(*p*) *Re Harrison*, 22 L. J. Ch. 60; *Cooper v. Macdonald*, 14 W. R. 755; *Travis v. Illingworth*, 2 Dr. & S. 345; *re Dawson*, 3 N. R. 397.

(*q*) *Re Dalgleish*, 4 Ch. D. 143;

thereby saved, it will appoint new trustees, though there is no difficulty in exercising the power (*r*).

The Court will re-appoint the continuing trustees to be sole trustees in the place of the continuing and retiring trustees(*s*).

**Felon.** The Court may appoint a new trustee in the place of a trustee convicted of felony (*t*).

**Charities.** Appointments of new trustees of charities may be obtained on summons in chambers under the Charitable Trusts Act, 1853 (*u*); but the jurisdiction of the Court to act upon petition is concurrently preserved (*x*). The petition should be intituled in Sir S. Romilly's Act as well as in the Trustee Act and in such other Act as is applicable (*y*). The fiat of the Attorney-General should be applied for (*z*); and unless the application is made in a pending action or matter, the sanction of the Charity Commissioners should be obtained (*a*). Where trustees have been so appointed, a vesting order under the 45th section may be made in chambers (*b*).

**Alien.** New trustees of an alien's will have been appointed, the Crown not opposing (*c*).

**Invalid deed.** The Court will refuse to enter into any question as to the

*re Mundell*, 8 W. R. 683; *re Driver*, L. R. 19 Eq. 352.

(*r*) *Re Davies*, 3 Mac. & G. 278; *re Chauncey*, 14 W. R. 849; *re Manning*, Kay, App. 28.

(*s*) *Re Stokes*, L. R. 13 Eq. 333; *re Tatham*, W. N. (1877), 259; *re Harford*, 13 Ch. D. 135; 41 L. T. 382.

(*t*) Trustee Extension Act, 1852, s. 8. See 33 & 34 Vic. c. 23.

(*u*) *Re Conyer's School*, 10 Hare, App. 5.

(*x*) 16 & 17 Vic. c. 137, s. 43;

*Morgan*, 98.

(*y*) *Re Rolles*, 3 D. M. & G. 153; *re Gloucester*, 10 Hare, App. 3.

(*z*) *Re Rolles*, *ubi sup.*; but see *Morgan*, 98.

(*a*) 16 & 17 Vic. c. 137, s. 17; *re Jarvis*, 1 Dr. & S. 97.

(*b*) *Re Davenport*, 4 D. M. & G. 839.

(*c*) *Re Martinez*, W. N. (1870), 70; and see *re Giraud*, 32 Beav. 385; but see now 33 & 34 Vic. c. 14, s. 2, enabling aliens to hold property.



validity of the deed, and has appointed new trustees of a settlement which was alleged to be invalid (*d*).

The Court, in appointing new trustees, will generally appoint so many as will make up the original number. It will increase the number (*e*); but except under special circumstances, it will not reduce it (*f*). Two were appointed in the place of three where the trust was almost wound up (*g*); and also where no successor could be found, and there was power to reduce the number (*h*).

Number of trustees appointed.

The Court will not appoint a single trustee, though only one was originally appointed (*i*); but where the trust was nearly at an end, the Court appointed one in the place of the one originally appointed (*k*).

The Court will not, as a general rule, appoint persons resident out of the jurisdiction (*l*); unless the beneficiaries are also resident abroad, or there are other special reasons for doing so (*m*).

Who may be appointed.

Nor will the Court appoint one of the *cestuis que trusts* (*n*); nor a near relative of the *cestuis que trusts*, except under special circumstances (*o*). Where, however, no other person could be found to accept the trust, the

(*d*) *Re Matthews*, 26 Beav. 463; *Att.-Gen. v. Ward*, 6 Hare, 477.

(*e*) *Birch v. Cropper*, 2 De G. & S. 255; *Plenty v. West*, 16 Beav. 356; *re Boycott*, 5 W. R. 15; *D'Adhemar v. Bertrand*, 35 Beav. 19.

(*f*) *Bulkeley v. Eglinton*, 1 Jur. N. S. 994.

(*g*) *Re Marriott*, W. N. (1868), 215.

(*h*) *Re Stokes*, L. R. 13 Eq. 333; and see *re Tatham*, W. N. (1877), 259; *re Harford*, 13 Ch. D. 135.

(*i*) *Re Tunstall*, 4 Dr. & S. 421; *re Dickinson*, Jur. N. S. 724; *re Drackebury*, L. R. 10 Eq. 45; *re*

*Ellison*, 2 Jur. N. S. 62; *re Porter*, *ib.* 349.

(*k*) *Re Reynault*, 16 Jur. 233.

(*l*) *Re Guibert*, 16 Jur. 852; *re Long*, 17 W. R. 218.

(*m*) *Re Hill*, W. N. (1874), 228; *re Smith*, W. N. (1872), 134; *re Drewe*, W. N. (1876), 168; *re Cunard*, 27 W. R. 52; *re Austen*, 38 L. T. N. S. 601; *re Curtis*, Ir. R. 5 Eq. 429.

(*n*) *Exp. Clutton*, 17 Jur. 988; *re Conybeare*, 1 W. R. 458; *re Chissold*, 10 L. T. N. S. 642.

(*o*) *Wilding v. Bolder*, 21 Beav. 222.

Court has appointed a tenant for life (*p*); a *cestui que trust* (*q*); a near relative (*r*); an unmarried lady (*s*); and a solicitor of the petitioner (*t*). Where beneficiaries have been appointed, the Court has required an undertaking that, whenever either of them should become a sole trustee, he would take immediate steps to appoint a co-trustee (*u*). The continuing trustees may be re-appointed without the addition of a new trustee (*x*).

### *Mode and Form of Application.*

Application,  
how made.

Applications under the Act are usually made by petition (*y*); but an order may be made in a cause without a petition (*z*), unless the application is in Lunacy (*a*).

Where an order has already been made appointing new trustees, a subsequent vesting order may be obtained on motion (*b*); and where new trustees of a charity have been appointed under the Charitable Trusts Act, a vesting order under s. 45 may be obtained in chambers (*c*).

Applications under ss. 29 and 30, that is where there has been an order for sale or conveyance, may also be made by summons (*d*).

(*p*) *Exp. Clutton*, 17 Jur. 988; and see *Forster v. Abraham*, L. R. 17 Eq. 351.

(*q*) *Re Conybeare*, 1 W. R. 458.

(*r*) *Re Hattatt*, W. N. (1870), 14; *re Davis*, L. R. 12 Eq. 214.

(*s*) *Re Berkley*, L. R. 9 Ch. 720; *re Campbell*, 31 Beav. 176.

(*t*) *Re Brentnall*, W. N. (1872), 77.

(*u*) *Re Burgess*, W. N. (1877), 87; *re Hattatt*, W. N. (1870), 14.

(*x*) *Re Harford*, 13 Ch. D. 135; *re Stokes*, L. R. 13 Eq. 333.

(*y*) Trustee Act, 1850, s. 40.

(*z*) *Ibid.* s. 43; *Wood v. Beetlestone*, 1 K. & J. 213; *D'Adhemar v. Bertrand*, 35 Beav. 19.

(*a*) *Jeffryes v. Drysdale*, 9 W. R. 428; *re Dawson*, 6 N. R. 346.

(*b*) *Re Holbrook*, 5 Jur. N. S. 1333; *Mackenzie v. Mackenzie*, Seton, 525.

(*c*) *Re Davenport*, 4 D. M. & G. 839; and see *re Lincoln Methodist Chapel*, 1 Jur. N. S. 1011.

(*d*) Cons. Ord. xxxv. 1 (4); *Clark v. Ward*, 14 W. R. 241; and see *Harrison v. Smith*, 17 W. R. 646.

The petition must be presented in Lunacy if it affect the estate of a trustee or mortgagee who is a lunatic or of unsound mind (*e*); unless the trustee of unsound mind is an infant (*f*); or is out of the jurisdiction (*g*). But where one of several trustees is a lunatic, and it is desired to appoint a new trustee in his place, the petition must be entitled in the Chancery Division as well as in Lunacy, otherwise the vesting order will sever the joint tenancy (*h*). And a petition for an order vesting stock standing in the name of a lunatic in new trustees must also, it seems, be presented in Chancery and Lunacy (*i*).

A petition for the appointment of a new trustee where the donee of the power is a lunatic may be presented in Chancery only (*k*).

A petition for the appointment of a new trustee in the place of a trustee of unsound mind may, it seems, be presented either in Chancery (*l*) or Lunacy (*m*); and it seems that where an order is made in Lunacy appointing a new trustee in the place of a lunatic, other new trustees may be appointed by the same order without intituling the petition also in the Chancery Division (*n*).

Where a trustee of property partly Irish is a lunatic, a petition for the appointment of new trustees and for vesting the Irish property in them must be intituled both in Lunacy and in the Chancery Division (*o*).

The petition must be intituled in the cause (if any),

To which  
Court.

Title of peti-  
tion.

(*e*) Trustee Act, ss. 3, 4, 5, 6;  
*re Mason*, L. R. 10 Ch. 273; *re Ormerod*, 3 D. & J. 249; *Jeffries v. Drysdale*, 7 Jur. N. S. 667; but see *Herring v. Clark*, L. R. 4 Ch. 167.

(*f*) *Re Arrowsmith*, 6 W. R. 642.

(*g*) *Re Gardner*, 10 Ch. D. 29.

(*h*) *Re Pearson*, 5 Ch. D. 982.

(*i*) *Re Currie*, 10 Ch. D. 93.

(*k*) *Re Sparrow*, L. R. 5 Ch. 662. See Lunacy Regulation Act, 1853, s. 137.

(*l*) *Re Vickers*, 3 Ch. D. 112.

(*m*) *Re Owen*, L. R. 4 Ch. 782;  
*re Donisthorpe*, L. R. 10 Ch. 55.

(*n*) *Re Owen*, L. R. 4 Ch. 782.

(*o*) *Re Lamotte*, 4 Ch. D. 325;  
and see *re Hodgson*, 11 Ch. D. 888.

and also in the matter of the Acts (*p*). If the petition is for the appointment of new trustees of a charity, it should also be intituled in the matter of Sir Samuel Romilly's Act and such other Act as is applicable (*q*).

Who may petition.

An application for the appointment of a new trustee or new trustees, or concerning any lands, stock, or chose in action, subject to a trust, may be made by any person, beneficially interested, whether under disability or not, or by any person duly appointed a trustee (*r*).

Where the application is concerning any lands, stock, or chose in action subject to a mortgage, it may be made by any person beneficially interested in the equity of redemption, whether under disability or not, or by any person interested in the monies secured by such mortgage (*s*).

The application may be made by a person contingently entitled (*t*) ; or by the personal representatives of beneficiaries (*u*) ; or, *semble*, by a new trustee duly appointed (*x*) ; but not by the committee of a lunatic beneficiary (*y*).

Where a purchaser under a decree has paid his money into Court, he is the proper person to apply for a vesting order (*z*) ; but the plaintiff may be co-petitioner (*a*). A vesting order has been made on the application of a plaintiff in a creditor's administration suit, the purchaser consenting (*b*).

A petition for reconveyance of the legal estate out-

(*p*) *Huntley v. Clutterbuck*, W. N. (1872), 81 ; *Gough v. Bage*, 25 L. T. N. S. 738 ; but see Daniell, 1825, n. (c).

(*q*) *Re Gloucester Charities*, 10 Hare, App. 3. As to consent of Commissioners and fiat of Att.-Gen., see *re Rolles*, 3 D. M. & G. 153 ; *ante*, p. 254.

(*r*) Trustee Act, 1850, s. 37.

(*s*) *Ibid*.

(*t*) *Re Sheppard*, 4 D. F. & J. 423.

(*u*) *Re Gill*, Seton, 524.

(*x*) *Exp. Russell*, 1 Sim. N. S. 404.

(*y*) *Re Bourke*, 2 D. J. & S. 427.

(*z*) *Ayles v. Cox*, 17 Beav. 584.

(*a*) *Rowley v. Adams*, 14 Beav. 130.

(*b*) *Re Wragg*, 1 D. J. & S. 356.

standing in a lunatic mortgagee should be presented by the committee (c).

### *Service.*

On petitions for the appointment of new trustees, all Beneficiaries. persons beneficially interested should, as a general rule, either join in the application or be served (d); but where they are very numerous, or there is some other sufficient reason why they should not all be served, service on some may be dispensed with (e). Trustees with a power of sale sufficiently represent their *cestuis que trusts* (f).

The retiring trustees should also be served, or should Retiring trustee. join as co-petitioners (g).

It has been held that a petition for a vesting order, or for Heir. the appointment of a person to convey, need not be served upon the infant heir of a trustee or mortgagee, nor upon the guardian of such infant (h); but Jessel, M. R., in a recent case, considered it contrary to principle to take an estate out of a person without giving him notice, and ordered the infant to be served (i). If, however, the heir is an adult, he must be served, as he may be entitled to some costs (k).

Where there have never been any trustees in consequence of the death of them all in the testator's lifetime, the heir of the testator must be served (l).

(c) *Re Wheeler*, 1 D. M. & G. 434; *re Phillips*, L. R. 4 Ch. 629.

(d) *Re Fellows*, 2 Jur. N. S. 62; *re Richards*, 5 De G. & S. 636; *re Sloper*, 18 Beav. 596; *re Maynard*, 16 Jur. 1084; *re Bourke*, 2 D. J. & S. 426.

(e) *Re Smyth*, 2 De G. & S. 781; *re Sharpley*, 1 W. R. 271; *Jones v. James*, 9 Hare, App. 80.

(f) *Re Blanchard*, 3 D. F. & J. 131; R. S. C. Ord. XVI., 7.

(g) *Re Sloper*, 18 Beav. 596;

*Futvoye v. Kennard*, 3 L. T. N. S. 687.

(h) *Re Tweedy*, 9 W. R. 398; *re Willan*, 9 W. R. 689; *re Wise*, 5 De G. & S. 415; *re Little*, L. R. 7 Eq. 323.

(i) *Re Jones*, 22 W. R. 837.

(k) *Re Oxenham*, W. N. (1875), 6; but see *Purvis v. Abraham*, W. N. (1866), 126.

(l) *Gunson v. Simpson*, L. R. 5 Eq. 332; *re Smirthwaite*, L. R. 11 Eq. 251.

It would seem, however, to be no longer necessary to serve the heir or devisee of a mortgagee of freeholds or copyholds (*m*); nor the heir of a bare trustee (*n*).

Trustee refusing to convey.

Where the petition is for a vesting order against a trustee or mortgagee who refuses to transfer or convey, the petition need not be served upon such trustee or mortgagee (*o*).

Mortgagor.

A petition by the committee of a lunatic mortgagee for re-conveyance to the mortgagor must not be served on the mortgagor (*p*).

Trustee of unsound mind.

A petition for the appointment of new trustees or for a vesting order, need not be served upon a trustee of unsound mind not so found (*q*); but the committee of a lunatic must be served (*r*).

Annuitant.

A petition for a vesting order of land subject to an annuity, need not be served upon the annuitant (*s*).

Lessor.

A petition in respect of leaseholds need not, in the absence of any clause restricting assignment, be served upon the owner of the fee (*t*).

Lord of the manor.

A petition for a vesting order of copyholds need not be served upon the lord of the manor (*u*).

Bankrupt trustee.

It seems that a petition for the removal of a bankrupt trustee should be served upon the bankrupt (*x*); unless he has absconded (*y*).

(*m*) Vendor & Purchaser Act, 1874.

(*n*) 38 & 39 Vic. c. 87, s. 48.

(*o*) *Re Baxter*, 2 Sm. & G. App. 5; *re Crowe*, L. R. 13 Eq. 26; *re Russell*, 1 Sim. N. S. 409.

(*p*) *Re Phillips*, L. R. 4 Ch. 629; *re Jones*, 2 Ch. D. 70.

(*q*) *Re East*, L. R. 8 Ch. 735; *re Green*, L. R. 10 Ch. 272.

(*r*) *Re Saumarez*, 8 D. M. & G. 390; *re Parker*, 32 Beav. 580; *re Wood*, 7 Jur. N. S. 323.

(*s*) *Re Winteringham*, 3 W. R. 578.

(*t*) *Re Matthew*, 2 W. R. 85; but see *re Farrant*, 20 L. J. Ch. 532.

(*u*) *Paterson v. Paterson*, L. R. 2 Eq. 31; *Ayles v. Cox*, 17 Beav. 585.

(*x*) *Exp. Whitely*, 1 Dea. 478; *exp. Harris*, 11 L. J. Bank. 16.

(*y*) *Combes v. Brookes*, L. R. 12 Eq. 61; *re Renshaw*, L. R. 4 Ch. 783.

The Court has jurisdiction to order service of the petition upon minors residing out of the jurisdiction (z). Service out of jurisdiction.

### *Evidence and Hearing.*

Upon every application under the Act evidence must be adduced of the facts on which the application is founded. Evidence.

When the application is to divest an estate, it must be supported by strict evidence (a); and whenever it vests an estate in any person absolutely, the title of such person must be proved by strict evidence. When the estate is vested in trustees, the title of the persons beneficially interested need not be strictly proved; but an affidavit of some person acquainted with the facts, showing who they are and how their title arises, is sufficient (b). On petition for vesting order.

If the application is for the appointment of new trustees, evidence is required to show who are the parties beneficially interested, though strict proof as to the parties so interested is not necessary (c). The deaths or disability of the trustees should, however, be strictly proved. The fitness of the proposed trustees should be proved by affidavit, which must not be made by the solicitor of any of the parties (d); and it seems that there ought to be an affidavit or affidavits of two persons as to fitness (e). The written consent of the proposed trustees to act, and an affidavit verifying their signatures, must also be produced (f). The proposed trustees should not appear (g); On petition for new trustees.

(z) *Re Wycherley*, 1 L. R. Ir. 12.

(a) *Re Powell*, 4 K. & J. 338; *re Wise*, 5 De G. & S. 415.

(b) *Re Hoskins*, 4 De G. & J. 436; *Daniell*, 1825.

(c) *Seton*, 548; *re Hoskins*, *supra*: where an affidavit of the

solicitor, without certificates, was held sufficient.

(d) *Grundy v. Buckeridge*, 17 Jur. 731.

(e) *Seton*, 548.

(f) *Re Battersby*, 16 Jur. 900.

(g) *Re Draper*, 2 W. R. 440.

but they may do so for the purpose of consenting to act (*h*). A disclaimer by deed does not appear to be necessary (*i*).

The Court has required an executor who had not proved, to renounce probate before vesting the estate in his co-executor (*k*).

Affidavits filed in a cause have been allowed to be used as evidence on a petition (*l*).

New trustees of a will of real estate have been appointed before probate, on evidence by one of the attesting witnesses of the due execution of the will (*m*).

Hearing.

Upon the hearing of the petition the Court may direct a reference, or may direct the petition to stand over for further evidence or for further service (*n*). Where the evidence is satisfactory the Court will make the order without a reference (*o*).

Commission may be directed.

Where the petition relates to a person of unsound mind, the Judges in Lunacy may direct a commission to issue and may postpone making the order until a return has been made to such commission (*p*).

Suit may be directed.

Upon any petition under the Act the Court may postpone making any order until the right of the petitioner or petitioners has been declared in a suit instituted for that purpose (*q*).

### Costs.

A petition under the Act may be dismissed with or without costs (*r*).

Cost may be paid out of the estate.

The costs and expenses of and relating to petitions, orders, directions, conveyances, assignments, and transfers

- (*h*) *Re Parke*, 21 L. T. 218.
- (*i*) *Seton*, 548; *Foster v. Dawber*, 1 Dr. & S. 172.
- (*k*) *Re Badcock*, 2 W. R. 386.
- (*l*) *Re Pickance*, 10 Hare, App. 35.
- (*m*) *Re Wickens*, W. N. (1879), 151.

- (*n*) *Trustee Act*, 1850, s. 41.
- (*o*) *Re Tunstall*, 4 De G. & S. 421; *re Procter*, 16 Jur. 233.
- (*p*) *Trustee Act*, 1850, s. 52.
- (*q*) *Ibid.*, s. 53; *Collinson v. Collinson*, 3 D. M. & G. 409; *re Burt*, 9 Hare, 289.
- (*r*) *Ibid.*, s. 42.



under the Act, may be ordered to be paid and raised out of the lands or personal estate, or out of the rents or produce thereof, or as the Court shall direct (*s*).

Where the application is for the general benefit of the estate, as, for instance, the appointment of new trustees, the costs will be ordered to be paid out of *corpus* as between solicitor and client; but where it is solely for the benefit of the tenant for life, he will be ordered to pay the costs (*t*). Where an additional trustee was appointed on the petition of and for the benefit of reversioners, they were ordered to pay the costs (*u*).

Where no trust funds were available, the Court ordered the amount with interest at £4 per cent. to be a charge upon the real estate and to be raised by mortgage (*x*).

The costs of obtaining a vesting order on a sale must be borne by the vendor (*y*); unless the conditions of sale expressly provide for their payment by the purchaser (*z*).

The Court has no jurisdiction to make a respondent pay the costs of a petition under the Act (*a*). But a trustee who makes an improper opposition will have to bear his own costs, and will have the costs occasioned to the other parties by his opposition deducted from the costs properly payable to him (*b*). A respondent has been ordered to pay the costs occasioned by irrelevant charges introduced by him into the evidence (*c*).

The costs of a petition to get in the legal estate outstanding in a mortgagee or his heir or trustee, who has

Corpus or income.

May be charged upon estate.

Vendor and purchaser.

Respondents.

Costs in cases of lunacy.

(*s*) Trustee Act, 1850, s. 51.

(*t*) *Re Fellowes*, 2 Jur. N. S. 62;  
*Carter v. Sebright*, 26 Beav. 374;  
*re Parby*, 29 L. T. 72.

(*u*) *Re Brackenbury*, L. R. 10 Eq. 45.

(*x*) *Exp. Davies*, 16 Jur. 882;  
*re Crabtree*, 14 W. R. 497; *Seton*, 514, 544.

(*y*) *Ayls v. Cox*, 17 Beav. 584;  
*re Nash*, 4 W. R. 111.

(*z*) *Bradley v. Muntion*, 16 Beav. 294.

(*a*) *Re Primrose*, 23 Beav. 590;  
*re Sparks*, 6 Ch. D. 361; but see  
now R. S. C. Ord. LV., *ante*, p. 12.

(*b*) *Re Wiseman*, 18 W. R. 574.

(*c*) *Re Wills*, 9 Jur. N. S. 1225.

been found lunatic, will, if the petition is presented by the mortgagor, be ordered to be paid by the petitioner (*d*). If the petition is presented by the committee, they will be ordered to be paid out of the lunatic's estate, if he is beneficially entitled (*e*), or out of the trust estate, if he is a trustee (*f*). But the mortgagor, whether served or not, will not get his costs of appearance out of the lunatic's estate (*g*); and where it clearly appears on the face of the mortgage deed that the lunatic is a trustee, the costs will be ordered to be paid by the mortgagor (*h*). Where the petition is for transfer of stock out of the name of a lunatic trustee, no order will be made as to costs (*i*).

Where a mortgagee becomes of unsound mind, not so found, and the mortgagor applies for a vesting order on payment into Court of the debt, making the mortgagee a respondent to the petition, the Court has no jurisdiction to order the costs to be paid out of the mortgage debt, but each party must bear his own costs (*k*).

Two trust  
funds.

Where one petition was presented for the appointment of new trustees of two trust funds, the costs were ordered to be paid out of the two funds rateably (*l*).

Two petitions.

Where two petitions, for the appointment of new trustees of the same will, were presented on the same day, the costs of the second only, as being the more perfect, were allowed out of the estate (*m*).

(*d*) *Re Stuart*, 4 De G. & J. 317; *re Jones*, 2 D. F. & J. 554; but see *re Wheeler*, 1 D. M. & G. 435.

(*e*) *Exp. Richards*, 1 J. & W. 264; *re Wheeler*, 1 D. M. & G. 434; *re Phillips*, L. R. 4 Ch. 629.

(*f*) *Re Townsend*, 1 Mac. & G. 686; *re Jones*, 2 Ch. D. 70.

(*g*) *Re Phillips*, L. R. 4 Ch. 629.

(*h*) *Re Lewes*, 1 Mac. & G. 23; but see *re Townsend*, 1 Mac. & G. 686.

(*i*) *Re Garden*, 6 N. R. 347.

(*k*) *Re Sparks*, 6 Ch. D. 361; but see *re Viall*, 8 D. M. & G. 439.

(*l*) *Re Grant*, 2 J. & H. 764.

(*m*) *Re Pring*, 28 L. T. N. S. 467.

## CHAPTER XXXII.

### PETITION FOR ADVICE AND DIRECTION.

ANY trustee, executor, or administrator, shall be at liberty, without the institution of a suit, to apply by petition or summons for the opinion, advice, or direction of the Court on any question respecting the management or administration of the trust property, or the assets of any testator or intestate (*a*). Lord St. Leonards' Act, 1859, s. 30.

The usual and proper course is to apply by petition (*b*).

The object of the Act is to enable trustees, executors, or administrators, to obtain at a small expense the advice and direction of the Court upon minor questions respecting the management or administration of the trust property or assets; and since the Act does not give any right of appeal, it was not intended to authorise adjudications upon nice questions of law (*c*). Object of the Act.

The advice and direction of the Court has been obtained under the Act upon the following matters, viz., the investment of trust funds (*d*); varying investments (*e*); What question will be decided.

(*a*) 22 & 23 Vic. c. 35, s. 30; 233; *re French*, L. R. 15 Eq. 68; Seton, 491, *et seq.* *re Wedderburn*, 9 Ch. D. 112; *re*

(*b*) *Re Dennis*, 5 Jur. N. S. 1388; *Simson*, 1 J. & H. 89; *re Peyton*, L. R. 7 Eq. 463.

(*c*) *Re Mockett*, Johns. 628; *re Lorenz*, 1 Dr. & S. 401. (*e*) *Re Cooper*, W. N. (1873) 87; *re Clergy Orphan Corp.*, L. R. 18

(*d*) *Re Knowles*, W. N. (1868) Eq. 280.

retaining hazardous investments (*f*); the payment of debts or calls on shares (*g*); the appropriation and payment of interest on legacies (*h*); the maintenance and advancement of infants (*i*); the execution of a discretionary trust (*k*); the exercise of a power of sale or a power to mortgage (*l*); the propriety of concurring in a sale (*m*); the exercise of a power with the consent of an infant (*n*); the granting of leases (*o*); the laying out of money in building or drainage, or in other improvements or repairs (*p*); and the compromise of claims by trustees (*q*).

What questions  
will not be  
decided.

But the Court will not determine questions of construction (*r*); nor questions of importance and difficulty (*s*); nor will it make an order affecting the rights of parties to property (*t*); nor will it express an opinion upon a hypothetical case (*u*); nor upon matters of detail which cannot be properly dealt with without the superintendence of the Court and the assistance of affidavits (*x*).

Indemnity.

Trustees acting under the advice and direction of the Court will not be indemnified if they have been guilty

(*f*) *Re Tuck*, W. N. (1869) 15;  
*re Fanning*, 10 Jur. N. S. 307.

(*g*) *Re Box*, 1 H. & M. 552; *re Garratt*, W. N. (1870) 106; *re Cope*, W. N. (1877) 87.

(*h*) *Re Murray*, W. N. (1868) 195.

(*i*) *Re Kershaw*, L. R. 6 Eq. 322; *re Breed*, 1 Ch. D. 226; *re Cotton*, *ibid.*, 232; *re Tibbs*, 17 W. R. 304; *re Long*, 17 W. R. 218.

(*k*) *Symes v. Pugh*, W. N. (1875) 173.

(*l*) *Re Stone*, W. N. (1874) 4; *re Chawner*, L. R. 8 Eq. 569; *re Peyton*, 10 W. R. 515.

(*m*) *Earl Poulett v. Hood*, L. R. 5 Eq. 116.

(*n*) *Re Cardross*, 7 Ch. D. 728.

(*o*) *Re Shaw*, L. R. 12 Eq. 124; *re Lees*, W. N. (1875) 61.

(*p*) *Re Lord Hotham*, L. R. 12 Eq. 124; *re Leslie*, 2 Ch. D. 185; but see *re Barrington*, 1 J. & H. 142.

(*q*) *Seton*, 492; *re Mackintosh*, 42 L. J. Ch. 208.

(*r*) *Re Hooper*, 29 Beav. 656; *re Bunnnett*, 10 Jur. N. S. 1098; *re Thompson*, W. N. (1871) 190.

(*s*) *Re Mockett*, Johns. 628.

(*t*) *Re Lorenz*, 1 Dr. & S. 401; *re Evans*, 30 Beav. 232.

(*u*) *Re Box*, 11 W. R. 304.

(*x*) *Re Barrington*, 1 J. & H. 142.

of fraud, wilful concealment, or misrepresentation (*y*), and they will only be indemnified upon the facts as stated in the petition (*z*).

The usual and proper course is to apply by petition (*a*). <sup>Who may</sup> The application may be made by *cestuis que trusts* (*b*) <sup>apply.</sup> or by one only of several trustees (*c*). And trustees may apply, though the domicile of one of them and of the testator is Irish (*d*).

The petition must be intituled in the matter of the <sup>Title of petition.</sup> Act and in the matter of the particular trust, will, or administration (*e*). The Act provides that the petition shall be signed by counsel (*f*); but, *quære*, whether this is now necessary (*g*).

No evidence is admissible on the application (*h*). <sup>Evidence and</sup> The Court can only proceed upon the facts as stated in the <sup>inquiries.</sup> petition, and no inquiries will be directed (*i*).

As a general rule, it is unnecessary to serve any one <sup>Service.</sup> with the petition (*k*); but the petitioners should serve such persons as they think proper (*l*); and such service should be affected seven clear days before the hearing, unless the persons served consent to a shorter time (*m*).

There is no appeal from the opinion of the Court (*n*); <sup>Appeal.</sup> and the opinion does not prevent an action (*o*). The Court of Appeal will, however, at the request of the Judge, hear the application (*p*).

- |                                                    |                                                   |
|----------------------------------------------------|---------------------------------------------------|
| ( <i>y</i> ) 22 & 23 Vic. c. 35, s. 30.            | ( <i>h</i> ) <i>Re Muggeridge</i> , Johns. 625.   |
| ( <i>z</i> ) <i>Re Mockett</i> , Johns. 628.       | ( <i>i</i> ) <i>Re Mockett</i> , Johns. 628.      |
| ( <i>a</i> ) <i>Re Dennis</i> , 5 Jur. N. S. 1388. | ( <i>k</i> ) <i>Re Tuck</i> , W. N. (1869), 15 ;  |
| ( <i>b</i> ) <i>Re Ward</i> , 14 W. R. 96.         | <i>re Larken</i> , W. N. (1872), 85 ; <i>re</i>   |
| ( <i>c</i> ) <i>Re Muggeridge</i> , Johns. 625.    | <i>French</i> , L. R. 15 Eq. 68.                  |
| ( <i>d</i> ) <i>Re French</i> , L. R. 15 Eq. 68.   | ( <i>l</i> ) <i>Re Green</i> , 6 Jur. N. S. 530 ; |
| ( <i>e</i> ) Ord. 20th March, 1860, r. 3.          | but see <i>re Cook</i> , W. N. (1873), 49 ;       |
| For form of petition, see <i>re Pett</i> ,         | <i>re Muggeridge</i> , Johns. 625.                |
| 27 Beav. 576 ; <i>re Miles</i> , 27 Beav.          | ( <i>m</i> ) Ord. 20th March, 1860, r. 3.         |
| 579 ; <i>post</i> .                                | ( <i>n</i> ) <i>Re Bunnett</i> , 10 Jur. N. S.    |
| ( <i>f</i> ) 23 & 24 Vic. c. 38, s. 9.             | 1098.                                             |
| ( <i>g</i> ) R. S. C. Ord. XIX. 4 ; and            | ( <i>o</i> ) <i>Morgan</i> , 255.                 |
| see 36 & 37 Vic. c. 66, s. 100.                    | ( <i>p</i> ) <i>Re Green</i> , 2 D. F. & J. 121 ; |

Order.

The opinion, advice, or direction of the Judge shall be passed and entered, and remain as of record in the same manner as any order made by the Court or Judge, and the same shall be termed a "judicial opinion," or "judicial advice," or "judicial direction," as the case may be (*q*).

Costs.

The costs of the application are in the discretion of the Court (*r*); and will be directed to be paid out of the estate (*s*); or out of income, where the petition only relates to income (*t*).

*re Spiller*, 6 Jur. N. S. 386; 8 W. R. 333.

(*q*) Ord. 20th March, 1860, r. 4.

(*r*) 22 & 23 Vic. c. 35, s. 30; R. S. C. Ord. LV. 1.

(*s*) *Re Petts*, 27 Beav. 576; *re*

*Elmore*, 6 Jur. N. S. 1325; *re Lees*, W. N. (1875), 61; *re Leslie*,

2 Ch. D. 185; *re Thompson*, W. N. (1871), 190.

(*t*) *Re Spiller*, 6 Jur. N. S. 386.

## CHAPTER XXXIII.

### PETITION FOR INQUIRY (LUNACY).

THE commission, including the order for inquiry, is <sup>Who may</sup> obtained on petition to the Lord Chancellor. It is <sup>petition.</sup> usually presented by one or more of the next of kin or other member of the family of the supposed lunatic (*a*); but, under special circumstances, it may be presented by a stranger (*b*); or by the Attorney-General (*c*).

If, however, the lunatic is married, and the application is not made by the husband or wife, the assent of such husband or wife should be given in writing, the signature being verified by affidavit, and filed with the Registrar (*d*). Where the lunatic is unmarried, and the petition is not presented by the next of kin, it should be shown that they either assent to or are acquainted with the application (*e*).

Petitions for a commission have been preferred by an executor under a will against a legatee under the same will; by a trustee under a deed against his *cestui que trust*; by creditors against their debtor; by the solicitor of the Treasury against a person in prison; by a tenant against his landlord (*f*); and even by an absolute stranger (*g*).

(*a*) Pope, 51; *re Bedell*, 2 Coop.  
T. L. C. 163.

(*b*) *Re Anstie*, 1 Mac. & G. 200;  
*re S—*, 25 W. R. 133.

(*c*) 1 Coll. Lun. 125.

(*d*) Elmer, 7.

(*e*) Pope, 52.

(*f*) Shelf. 114, 115.

(*g*) *Ibid.*; *re S—*, 25 W. R.  
133.

In determining whether a commission shall issue, the Court will consider whether it will be for the benefit of the lunatic, and whether he requires protection either for his person or property (*h*); and if such is the case, the Court will not take into consideration the motives or demerits of the petitioner (*i*), though it may take care that he shall have no control over the person or estate of the lunatic (*k*).

Petition must be signed and filed.

The petition must be intituled "In the matter of A. B., a supposed lunatic"; and must be signed by the petitioner and attested by a solicitor (*l*). The petition and affidavits are filed with the Registrar in Lunacy, with whom a plain copy of the petition should also be left. The Registrar marks the original petition with the date of its presentation and returns it to the solicitor, to enable him to serve the alleged lunatic (*m*).

Evidence.

The petition should be supported by affidavits, generally of two medical men and of members of the family, or other persons well acquainted with the lunatic, explaining the particulars of the alleged insanity and the conduct and conversation by which it is shown. The affidavits should also state in general terms the nature and amount of the alleged lunatic's property, and who are his nearest relations (*n*). The affidavits must not be sworn before the petitioner's solicitor (*o*).

Service.

The petition, if presented by a stranger, must be served on the nearest relations of the alleged lunatic; and if pre-

(*h*) *Exp. Tomlinson*, 1 V. & B. 57.

(*i*) *Re J. B.*, 1 My. & Cr. 538; *re Clare*, 3 Jon. & Lat. 571.

(*k*) *Re Clare*, 3 Jon. & Lat. 571.

(*l*) Gen. Ord. 4th May, 1827. As to presentation of the petition, see *post*, p. 279.

(*m*) *Elmer*, 7.

(*n*) *Ibid.* 6. See Lunacy Regulation Act, 1853, s. 59.

(*o*) *Re Hogan*, 3 Atk. 813; *Hopkin v. Hopkin*, 22 L. J. Ch. 728; *Spittle v. Walton*, 40 L. J. Ch. 368; and see *re Gregg*, 23 L. T. N. S. 234.



sented by one of the next of kin, without the consent of the husband or wife, it must be served on the husband or wife (*p*).

The alleged lunatic must be personally served with a copy of the petition, upon which must be endorsed a notice, signed by the petitioner or his solicitor, in the form given in the Gen. Ord. 1853, r. 7; and an affidavit of service, stating the time, place and mode of service, must be filed with the Registrar (*q*).

Where personal service cannot be effected, or it is deemed inexpedient to effect personal service, service may be effected on some adult inmate at the dwellinghouse, or usual or last known place of abode of the alleged lunatic within the jurisdiction; and in such case the affidavit of service should state the grounds and reasons for such substituted service (*r*).

Where there are no next of kin, it is nevertheless unnecessary to serve the Attorney-General (*s*).

The alleged lunatic may, by a notice signed by him and attested by his solicitor and filed with the Registrar, demand an inquiry before a jury (*t*); or he may, upon the hearing of the petition for inquiry, by himself, his counsel, or solicitor, orally or by petition, demand an inquiry by a jury, or may withdraw any notice demanding an inquiry by a jury previously filed by him (*u*).

If there is no opposition, and the Court is satisfied with the evidence, and the propriety of the inquiry, and that due notice has been given to the alleged lunatic, and the

Demand for inquiry by jury.

Petition when set down for hearing.

(*p*) *Re Rean*, 2 Coop. T. L. C. 163.

(*q*) Gen. Ord. 1853, rr. 7, 9; Lunacy Regulation Act, 1853, s. 40. For form of notice, see *post*.

(*r*) Gen. Ord. 1853, r. 9.

(*s*) *Re Early*, 1 Jur. 524; *exp*.

*Watson*, Jao. 161.

(*t*) Lunacy Regulation Act, 1853, s. 40; Gen. Ord. 1853, r. 10.

(*u*) Lunacy Regulation Act, 1862, ss. 8, 9; *re Crompe*, L. R. 4 Ch. 653.

time for requiring a jury has expired, and the affidavit of service has been filed, an order issues as of course, directing an inquiry to be made. But if the petition is opposed, or if a caveat has been lodged, or if the application be made without the concurrence of the husband or wife, or if, the alleged lunatic being unmarried, the application be made without the concurrence of the next of kin, the petition is set down by the Registrar for hearing before the Court (*x*).

**Two petitions.** Where two petitions are presented in the same matter and answered for the same day, that which was first presented is entitled to be first opened (*y*).

**Death of petitioner.** If the petitioner for an order for inquiry should die before the order is executed, a new order on petition must be obtained directing who shall prosecute the inquiry (*z*).

**Carriage of inquiry.** The carriage of the commission will be given to the party who is most likely to bring out the whole truth (*a*); subject to which a preference is given to the nearest of kin (*b*), unless there is some good reason for preferring other persons (*c*); but, as between relations, the carriage will be given to the person whose petition was first presented, unless some impropriety on his part is shown, or unless the other petition is clearly preferable (*d*). The present practice, however, is to give the carriage to the petitioner (*e*).

**Costs.** The Court may order the costs, charges, and expenses, of and incidental to the presentation of any petition for a commission or for an order of inquiry, and of and inci-

(*x*) *Re Turner*, 2 Coop. T. L. C. 163; *re Galpine*, 1 Coll. 197; Elmer, 8; Pope, 55.

(*y*) *Re Mallorie*, 1 H. & T. 435; *re Brookman*, 1 H. & T. 435; and see *re Wood*, 29 L. J. Ch. 54.

(*z*) Elmer, 11; see Pope, 195.

(*a*) *Re Webb*, 2 Phil. 10; *re*

*Whittaker*, 4 My. & Cr. 441; *re Green*, 2 Coop. T. L. C. 163.

(*b*) *Re Nesbitt*, 2 Phil. 245.

(*c*) *Exp. Tomlinson*, 1 V. & B. 57; *re Anstie*, 1 Mac. & G. 200.

(*d*) *Re Wood*, 1 D. F. & J. 142; *re Bariatinski*, 1 Phil. 379.

(*e*) Elmer, 10.

dental to the prosecution of any inquiry, inquisition, issue, traverse, or other proceeding consequent upon such commission or order, to be paid either by the petitioner or by the parties opposing the petition, or out of the estate of the alleged lunatic, or partly in one way and partly in another (*f*).

The costs, charges, and expenses of the petitioner will ordinarily be directed to be paid out of the estate, if there was reasonable ground for presenting the petition, even though the alleged lunatic be ultimately found sane (*g*), and though the lunatic die before a committee of his estate has been appointed (*h*). But where the petition is vexatious, or is solely for the benefit of the petitioners, or where there is misconduct on their part, they will be ordered to pay their own costs, and even the costs of all parties to the application (*i*).

The lunatic's costs of opposing a commission of inquiry will be allowed, as between solicitor and client, even where such opposition is vexatious (*k*); but the costs occasioned by the vexatious opposition of other parties will be ordered to be paid by them (*l*).

The order should specify the particular business in respect of which costs are desired; the practice being, not to direct taxation of costs from the foot of the last taxation, but only taxation of the costs of the particular proceedings of which costs have not already been given (*m*).

(*f*) Lunacy Regulation Act, 1862, s. 11. See *exp. Glover*, 1 Mer. 269.

(*g*) *re F—*, 2 D. J. & S. 89; *re C—*, L. R. 10 Ch. 75; *cf. re Windham*, 10 W. R. 499; *re S—*, 4 Ch. D. 301.

(*h*) *Re Meares*, 10 Ch. D. 552.

(*i*) *Re S—*, 4 Ch. D. 301; *re*

*Tutin*, 3 V. & B. 149; *re Clare*, 3 Jon. & Lat. 571; *exp. Glover*, 1 Mer. 269.

(*k*) *Field v. Tarnner*, 3 W. R. 469.

(*l*) *Re Smith*, 1 Russ. 348.

(*m*) *Pope*, 206.

## CHAPTER XXXIV.

### LEAVE TO ATTEND INQUIRY.

**Petition for leave to attend.** WHERE there is a commission of lunacy, none but the alleged lunatic, or persons acting on his behalf, can be heard on the inquiry without special leave, to be obtained on petition in lunacy (*a*). .

**Leave when granted.** The granting of such leave is purely in the discretion of the Court (*b*) ; and it will not, as a general rule, be given, unless the attendance of the applicant will be for the benefit of the alleged lunatic (*c*), or will be likely to aid in bringing out the truth (*d*).

Persons will not be allowed to attend merely on the ground of relationship (*e*).

**Leave may be conditional.** The Court in granting leave to attend may impose any conditions as to the costs of such attendance (*f*), or as to the extra costs caused by any such attendance (*g*), as it may deem fit ; but the Court will not make the order conditional upon the terms of the petitioner's consenting to be bound by the verdict (*h*).

**Access to lunatic.** Where liberty to attend is given, the Court will also allow access to the alleged lunatic for the purpose of preparing for the investigation (*i*).

- |                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(<i>a</i>) <i>Re Clements</i>, 2 Coop. T. L. C. 166 ; Pope, 57.<br/>         (<i>b</i>) <i>Re Nesbitt</i>, 2 Phil. 245.<br/>         (<i>c</i>) <i>Re Watts</i>, 1 Phil. 512.<br/>         (<i>d</i>) <i>Re Nesbitt</i>, 2 Phil. 245.<br/>         (<i>e</i>) <i>Re Nesbitt</i>, 2 Phil. 245.<br/>         (<i>f</i>) <i>Re Parkinson</i>, 5 Jur. 547 ;</p> | <p><i>re Webb</i>, 2 Phil. 10.<br/>         (<i>g</i>) <i>Re Richards</i>, 1 D. M. &amp; G. 719.<br/>         (<i>h</i>) <i>Re Nesbitt</i>, 2 Phil. 245.<br/>         (<i>i</i>) <i>Re Bariatinski</i>, 1 Phil. 375, 379.</p> |
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## CHAPTER XXXV.

### LEAVE TO TRAVERSE.

TRAVERSE is the usual process by which a person found <sup>Traverse.</sup> lunatic, or others on his behalf, may set aside the decision or verdict so finding him (a).

Leave to traverse the inquisition is a matter of right. <sup>Is a matter of right.</sup> But, although of right, the issuing of the writ is under a certain control; and where, for example, the Lord Chancellor, on personally inspecting the lunatic, sees instantly the signs of absolute raving madness, leave to traverse will not be granted. The Court has merely to ascertain whether the application is the act of the free will of the alleged lunatic, and not whether the will is that of a person of sound or unsound mind (b).

The right to traverse belongs not only to the alleged <sup>Who is entitled to traverse.</sup> lunatic, but also to any person having an interest in point of estate, or aggrieved by the inquisition (c). Thus, the application for leave may be made by a husband or wife (d), or by an alienee of the alleged lunatic (e). The conduct, however, of the parties applying for such leave may disentitle them to the right to traverse (f).

(a) Pope, 71.

(b) *Re Cumming*, 1 D. M. & G. 537, 554, 557; *Sherwood v. Sanderson*, 19 Ves. 280.

(c) *Re Cumming*, 1 D. M. & G. 553; *re Fust*, 1 Cox, 418; *exp. Ward*, 6 Ves. 579.

(d) *Re Fust*, *supra*; *re Nugent*, 2 Moll. 517.

(e) *Sherwood v. Sanderson*, 19 Ves. 280, 286; *re Roberts*, 3 Atk. 308, 312.

(f) *Re Fust*, 1 Cox, 418; *exp. Ward*, 6 Ves. 579.

Examination  
of lunatic.

Before leave to traverse is given the alleged lunatic must be personally examined by the Lord Chancellor as to his competence to form and express a wish to traverse (*g*).

An inquisition cannot therefore be traversed after the death of the lunatic (*h*).

Petition must  
be presented  
within three  
months.

Any person desiring to traverse may, within three months next after the return of the inquisition, present a petition in Lunacy for that purpose. The order, if made, will limit a time not exceeding six months from the date of the order within which the person desiring to traverse, and all other proper parties, are to proceed to trial of the traverse (*i*).

Security.

The Court may by the same or any other order, direct that the person desiring to traverse, not being the person the object of the inquisition, shall, within three weeks from the date of the order, give sufficient security to and to the satisfaction of the Master for all proper parties proceeding to trial within the time limited as afore-said (*k*).

Persons not  
petitioning  
within the  
time are  
barred.

Every person having a right to traverse, and not presenting his petition for that purpose within the time limited, or neglecting or refusing to give security as above, or not proceeding to trial within the time limited, and all persons claiming under him, are absolutely barred of his or their right to traverse, unless the Court shall, under the special circumstances of the case, think fit, upon petition for that purpose, to allow the traverse to be had and tried (*l*).

Order.

The order allowing a traverse must be filed by the solicitor having the carriage of it in the Petty Bag Office,

(*g*) *Re Cumming*, 1 D. M. & G. 537; *Sherwood v. Sanderson*, 19 Ves. 280, 283; *Anon.*, Moseley, 71.

(*h*) *Re Roberts*, 3 Atk. 308, 312.

(*i*) Lunacy Regulation Act, 1853, s. 148. As to presentation of the petition, see *post*, p. 279.

(*k*) *Ibid.*, s. 148.

(*l*) *Ibid.*, s. 149.

where the draft traverse is prepared (*m*). The draft is settled and signed by counsel, returned to the same office, and afterwards engrossed on parchment (*n*).

No person shall be admitted to traverse oftener than once (*o*).

Where the question of lunacy has been tried in some branch of the High Court, a person is not entitled to traverse. In such a case a petition for a new trial or inquiry must be presented in Lunacy within three months of the original trial (*p*).

The Court has an absolute discretion as to the costs of and incidental to the prosecution of any traverse (*q*).

(*m*) The Petty Bag Office is to be abolished on the next vacancy; 42 & 43 Vic. c. 78.

(*n*) As to further proceedings, see Elmer, 79; Pope, 75.

(*o*) Lunacy Regulation Act, 1853, s. 150; but see Pope, 76, n. (*s*).

(*p*) Lunacy Regulation Act, 1862, s. 7.

(*q*) *Ibid.*, s. 11.

## CHAPTER XXXVI.

### CONFIRMATION OF MASTER'S REPORT.

Report may  
be confirmed -  
without a  
petition.

THE report of the Master on being filed is, except in the cases to be presently mentioned, submitted to the Lord Chancellor for confirmation, without petition and without the attendance of parties (*a*).

When a  
petition is  
necessary.

The cases in which a petition for the confirmation of the report is necessary are as follows :—

1. Where the Lord Chancellor, on referring a matter to the Master to inquire and report, so directs ;
2. Where a statement of objections is brought in, and all the objections are not abandoned ;
3. Where the Masters, having regard to the special nature or circumstances of the case, are of opinion that the report ought to be confirmed by petition, and by endorsement on the report so direct ;
4. Where no order is made on the report being submitted for confirmation without petition (*b*).

Petition  
against con-  
firmation.

No person can, without special leave, present a petition against the confirmation of a report ; but on the hearing of the petition for confirmation of the report, any objections which have been formally insisted on before the

(*a*) Lunacy Regulation Act, 1853, s. 95. As to the costs of an un-

necessary petition, see *ibid.*, s. 74.  
(*b*) *Ibid.*, ss. 97, 95.



Master (c) may be brought forward in opposition to the confirmation of the report without any exceptions or cross petition (d).

The petition is presented at the office of the Registrar; and on being answered in the usual manner, is set down for hearing on the next petition day. Two clear days must elapse between the presentation of the petition and the day for hearing. The petition cannot be heard on any other than the usual petition day without special leave (e).

Copies of the petition so answered must be served on the solicitors for the several next of kin and on persons having liberty to attend the proceedings, and upon any person who has lodged a caveat against the order sought by the petition (f).

Upon the hearing of an opposed petition, the counsel for the person objecting to the report is, it seems, entitled to begin (g).

The order is drawn up by the Registrar in the same manner as other orders, and when signed by the Lord Chancellor or other Judges in Lunacy, is entered by the Registrar in a book kept for the purpose (h).

The petition must be filed before an order thereon can be passed (i).

The order should not recite any part of the statements contained in the petition, and only such part (if any) of the prayer as may be necessary, and it should not state any part of the Master's report, except the Master's con-

(c) Lunacy Regulation Act, 1853, s. 93.

(d) *Ibid.*, s. 94.

(e) Elmer, 40. As to evidence, see Lunacy Regulation Act, 1853, s. 59.

(f) Pope, 34.

(g) *Re Townshend*, 1 Phil. 804; *re Bariatinski*, 1 Phil. 442.

(h) Lunacy Regulation Act, 1853, s. 100.

(i) *Ibid.*, s. 98.

clusion or opinion, or so much thereof as may be necessary (*k*).

When the order deals with a fund the Registrar in Lunacy certifies to the Paymaster-General the stocks, funds, annuities, securities, or other effects, which by the order are to be sold, transferred, or delivered out respectively, in the same manner as the Registrars of the Court of Chancery were formerly accustomed to do (*l*).

The Bank before acting under an order requires an office copy of such order to be filed with them.

Orders made both in Chancery and Lunacy are drawn up in duplicate and filed both in the Chancery Division and in Lunacy (*m*).

A sole petitioner out of the jurisdiction must give security for costs (*n*).

Costs.

Petitions and other documents shall not contain unnecessary recitals or statements of proceedings or documents previously taken or used in the matter; and the Taxing-master may disallow the costs of any petition or other document, which is unnecessary or improper, in the whole or in part, or of unnecessary length (*o*).

Discharge of  
committee.

A committee may either apply by petition in Lunacy to be discharged from his office, or he may obtain from the Master a report in favour of his discharge, which in a proper case will be confirmed by fiat. The latter, however, seems to be the proper and usual course (*p*).

(*k*) Lunacy Regulation Act, 1853, s. 98.

(*l*) *Ibid.*, s. 101.

(*m*) Elmer, 41.

(*n*) *Re Grossett*, June, 1867, cit. Elmer, 45; and see *ante*, p. 5.

(*o*) Lunacy Regulation Act, 1853,

s. 89; and see *ibid.*, s. 74. As to costs generally, see Lunacy Regulation Act, 1862, s. 11; *ante*, p. 273.

(*p*) Pope, 135; and see *re French*, L. R. 3 Ch. 317.

## CHAPTER XXXVII.

### SUPERSEDEAS.

THE inquisition of lunacy may be superseded either on formal or on material grounds. Grounds for a  
supersedeas.

A commission may be superseded on formal grounds :

(1) where the party has been irregularly found to be a lunatic, as for instance where there has been misconduct on the part of the officer holding the inquisition, or on the part of the jury or witnesses (*a*) ; or (2) where the lunacy has not been carried back by the inquisition as far as was warranted by the evidence adduced before the commissioners and the jury (*b*).

A commission may be superseded on material grounds :

(1) where the lunatic is restored to a sound state of mind, and is capable of managing his affairs ; or (2) where there are circumstances which render some other arrangement than that introduced by the commission beneficial to the lunatic (*c*).

A commission cannot be superseded as to the person of the lunatic, and at the same time continued in force as against the parties accountable for the lunatic's estate. Commission  
cannot be  
superseded  
in part.  
But a lunatic who has recovered will be allowed, without superseding the commission, to have the control of his

(*a*) *Exp. Glover*, 1 Mer. 269 ; *Lunacy Regulation Act*, 1862, s. 3 ;  
*exp. Roberts*, 3 Atk. 6 ; Pops, 190. *re Sottomaior*, L. R. 9 Ch. 677.

(*b*) *Re Wooller*, cit. Shelf. 282 ; (*c*) Pope, 190.  
*re Warren*, *ibid.* ; but see now

fortune and to superintend the prosecution of accounts against accounting parties without the intervention of the committee (*d*).

Who may present petition.

The application for a supersedeas is made by petition in Lunacy. The petition should be presented in the name of the person who is alleged to have recovered a sound mind, and not in the name of his next of kin (*e*); but the committees of his person and estate may be joined as co-petitioners (*f*). It seems, however, that a petition may be presented in the name of the lunatic by third parties (*g*).

Evidence.

The petition must be supported by strong evidence of the petitioner's restoration to sanity, which should be given by medical men or other persons competent to form an opinion on the subject (*h*); and such evidence should show that the witnesses are aware of the grounds on which the lunacy was established, and should affirm the removal of them as well as address itself to the general health of the lunatic (*i*). It is not, however, necessary to prove that the lunatic is restored to as perfect a state of mind as he had before he became insane, if it is shown that he is really of sound mind and capable of managing his affairs (*k*). The existence of a delusion is a symptom of unsoundness of mind; and, *semble*, a commission will not be superseded so long as the delusion continues to exist (*l*).

Service.

A copy of the petition with the order for hearing endorsed thereon must be served upon the committees and

(*d*) *Re Gordon*, 2 Phil. 242.

(*e*) *Exp. Stanley*, 2 Ves. sen. 25.

(*f*) *Exp. Bampton*, Moseley, 78.

(*g*) *Re Dyce Sombre*, 1 Mac. & G. 116 : where the lunatic was abroad.

(*h*) Shelf. 279.

(*i*) Pope, 191.

(*k*) *Exp. Holyland*, 11 Ves. 9.

(*l*) *Re Dyce Sombre*, 1 Mac. & G. 116; and see *Att.-Gen. v. Parnther*, 3 Bro. C. C. 441.

next of kin, or on the latter only if there is no committee (*m*).

The lunatic must be seen and examined in private by the Lord Chancellor, either at the hearing of the petition, or at some other time specially appointed for the purpose. This is an essential preliminary to the issue of the supersedeas, and will not be dispensed with, except under very special circumstances (*n*).

Examination  
of lunatic.

When after examination of the lunatic the Court is not completely satisfied as to the recovery of the lunatic, one of two courses may be adopted: the Court may either direct an issue to try the fact (*o*), or may more or less suspend the commission until it is seen what is the effect of removing the restraint of the commission. The latter course is now generally adopted, and it seems that a supersedeas should not in any case be at once granted; but that in all cases the commission should be merely suspended in order that the Court may be satisfied not only that there is recovery whilst the restraint of the commission continues, but that the recovery will be continuous when that restraint is removed (*p*). The lunatic is in the meantime usually allowed complete liberty, and also the control and management of his estate (*q*).

Suspending  
commission.

Upon the issue of a supersedeas the accounts of the committee are finally taken before his security is discharged, unless the Master thinks fit to dispense with them (*r*). The deeds and other things deposited with the Master are also delivered out on the confirmation of the

Discharge of  
security.

(*m*) Elmer, 81.

(*n*) *Re Dyce Sombre*, 1 Phil. 436; *re Gordon*, 2 Phil. 242.

(*o*) *Exp. Holyland*, 11 Ves. 9; Pope, 192.

(*p*) *Re Blackmore*, 1 D. J. & S. 84, and cases there cited.

(*q*) *Ibid.* As to payment out of a fund in Court belonging to the lunatic, see *Leaf v. Coles*, 1 D. M. & G. 417.

(*r*) Pope, 187. As to discharge of the security, see Gen. Ord. 1853, r. 46.

report as to who is entitled to receive them (s), unless the Lord Chancellor in the order shall have otherwise directed (t).

Inquisition  
may be sus-  
pended upon  
terms.

Where it appears to the Court to be for the lunatic's benefit and to be expedient that the inquisition should be superseded on terms and conditions and subject to an arrangement respecting the lunatic's estate, the Court may, upon the consent of the lunatic and of such other persons, if any, whose consent the Court may deem necessary, order the inquisition to be superseded on such terms and conditions, to be fulfilled by the lunatic or such other person, and subject to such arrangement respecting the lunatic's estate as the Court may under the circumstances of the case think proper; and may by the same or any other order direct the lunatic and any other persons, being consenting parties to the arrangement, to execute and do all such conveyances, transfers, and things as may be necessary or proper for securing the fulfilment of such terms and conditions and the completion of such arrangement (u).

(s) Gen. Ord. 1853, r. 47.

(t) Elmer, 82.

(u) Lunacy Regulation Act, 1853,

s. 152; Lunacy Regulation Act,  
1862, s. 10.

## CHAPTER XXXVIII.

### PETITION ON DEATH OF LUNATIC.

WHERE there is a fund in Court a petition must on the death of the lunatic be presented by his executors or administrators for payment out of the fund after taxation and payment of the costs of the committee and next of kin (a). Payment out to personal representatives.

The Court will not on the death of the lunatic administer his estate in Lunacy (b), though it will retain the fund in Court until a suit has been instituted to ascertain who are the next of kin (c). If the lunatic was seised of real estate the Court will leave the question as to the real estate untouched, in order that any person may assert his title to the estate ; but it is not the duty of the committee to come to the Court in the first instance (d). The Court has no jurisdiction in Lunacy after the death of the lunatic to try the question of heirship ; but in a case of disputed heirship possession was, under the circumstances, given to the parties reported by the Master to be the heirs (e). Court will not administer the estate.

The petition is intituled "In the matter of A. B., a person of unsound mind now deceased ;" or, "In the Title and form of petition.

(a) *Elmer*, 99 ; *Pope*, 198. As to transfer of the fund to the credit of a cause, see *Shelf*. 290.

(b) *Exp. Gilbert*, 1 B. & B. 297 ; *re Currie*, 10 Ch. D. 93.

(c) *Wigg v. Tiler*, 2 Dick. 552.

(d) *Re Butler*, L. R. 1 Ch. 607, 611 ; *re Ferrior*, L. R. 3 Ch. 175.

(e) *Exp. Clarke*, Jac. 589, 592 ; *re Fitzgerald*, 2 Sch. & Lef. 432 ; *re Ferrior*, L. R. 3 Ch. 175.

matter of A. B., a lunatic deceased." The petition need not ask for directions as to passing the committee's final account, nor for the discharge of his security (*f*).

**Service.** The petition must be served on the next of kin and the committee; and the committee must be served though he has passed his final account and his security has been discharged (*g*).

**Evidence.** The following evidence is necessary, namely: the several records in lunacy referred to in the petition, the probate of the will or letters of administration, an affidavit of death and identity, a certificate of burial (not of death merely), and a certificate of the fund in Court (*h*).

**Discharge of security.** Upon the order for transfer being produced to the Master, and upon its appearing that the directions contained therein have been complied with, the bond given by the committee will be delivered up by the Master to be vacated and cancelled (*i*). If the security is by recognizance, the Master, by certificate, directs the Clerk of Inrolments in Chancery to attend the Master of the Rolls with the inrolment of the recognizance to be vacated and discharged. If the security has been given by deposit of a fund in Court, the Master by report approves the payment out of such fund, and on confirmation of the report, the fund is paid out accordingly (*k*).

(*f*) Gen. Ord. 1853, r. 44.

(*g*) *Re Wylde*, 5 D. M. & G. 25.

(*h*) Elmer, 250.

(*i*) Gen. Ord. 1853, r. 46;

Elmer, 99.

(*k*) Gen. Ord. 1853, r. 46.



## CHAPTER XXXIX.

### SMALL PROPERTIES OF INSANE PERSONS.

WHERE the property of a person of unsound mind does not exceed £1000 in value, or does not produce an annual income exceeding £50, the Lord Chancellor intrusted as aforesaid may, without directing any inquiry under a commission of lunacy, make such order as he may consider expedient for the purpose of rendering the property of such person or the income thereof available for his maintenance or benefit, or for carrying on his trade or business (a).

Property under £1000 may be applied without inquisition.

For the purpose of giving effect to any such order the Lord Chancellor intrusted, as aforesaid, may direct the property to be sold, mortgaged, or otherwise disposed of, and a conveyance, transfer, or other disposition thereof to be executed or made by any person on his behalf, and may order the proceeds of any such sale, charge, or other disposition, or the dividends or income of such property to be paid to any relative of such insane person or to such other person as it may be considered proper to trust with the application thereof, to be by him applied in the maintenance or for the benefit of the insane person, or of him

Sale and disposition of such property.

(a) Lunacy Regulation Act, 1862, s. 12; *Harvey v. Trenchard*, 34 Beav. 240. The sums are to be understood as net value and net

income: *re Adams*, 9 L. T. N. S. 626; *cf. re Sandford*, 1 Mac. & G. 538; *Pope*, 212.

and his family, either at the discretion of such relative or person, or in such manner and subject to such control, and with or without such security as the Lord Chancellor intrusted as aforesaid may direct; and for the purpose above mentioned the Lord Chancellor intrusted as aforesaid, shall have the same powers with respect to the property of such person as if he had been found lunatic by inquisition (b).

Property of persons acquitted on the ground of insanity.

Where any person has, on the trial of any indictment, been acquitted on the ground of insanity, the Lord Chancellor intrusted as aforesaid may, on being satisfied by affidavit or otherwise of the continued insanity of such person and of his being still in confinement, make any such order with respect to the property of such person, and the application thereof for his maintenance or benefit or that of his family, or for carrying on his trade or business, as above mentioned (c).

Form of petition.

The application in pursuance of the above sections is made by petition, which must be signed by the petitioner and be attested by a solicitor, and may be in the form set out in the Schedule to the Gen. Ord. 7th Nov., 1862, subject to such variations as the circumstances of the case may require (d).

Service.

The person of unsound mind must be served personally with a copy of the petition, with a notice thereon indorsed, signed by the petitioner, or his solicitor, in the form set forth in the Gen. Ord., 7th Nov., 1862, r. 4; and an affidavit of service, stating particularly the time, place, and mode of service, must be filed with the Registrar (e).

(b) Lunacy Regulation Act, 1862, s. 13. As to sale of land belonging to a lunatic married woman, see *re Stables*, 4 D. J. & S. 257.

(c) Lunacy Regulation Act, 1862, s. 15.

(d) Gen. Ord. 7th Nov. 1862, r. 3. For form of petition, see *post*.

(e) Gen. Ord. 7th Nov. 1862, rr. 4, 5. For form of notice to be endorsed, see *post*.

The alleged insane person may object to the order being made, by filing with the Registrar a notice, in the form set forth in the Gen. Ord. (*f*).

The Lord Chancellor or Lords Justices may, upon con- Hearing.  
sideration of the petition and the evidence, either make an order without any attendance of counsel, solicitor, or parties; or may direct the petition to be set down for hearing; or may refer the matter generally to the Masters, or may refer it to the Masters to make any particular inquiry (*g*).

The Masters may direct notice of the proceedings to be given to the next of kin, or to any other person (*h*).

Evidence as to the insanity, kindred, and property must Evidence.  
be furnished, and it must be shown that the property does not exceed in value the prescribed limit, and that the sale (if any) is practicable. The affidavit of one medical man is generally sufficient (*i*).

(*f*) Gen. Ord. 7th Nov. 1862, r. 6. see *ibid.*, rr. 8, 9, 10.

(*g*) *Ibid.*, r. 7. As to the in- (*h*) *Ibid.*, r. 11.

quiries to be made by the masters, (*i*) Elmer, 128.

## CHAPTER XL.

### PETITIONS OF RIGHT ACT, 1860.

When a  
petition of  
right will lie.

A PETITION of right will lie for the recovery of land or goods, or any right in or to the same (*a*). It will lie to enforce the grant of a right to work minerals (*b*); and even for breach of a contract resulting in unliquidated damages (*c*); and, *semble*, for relief against forfeiture of a lease (*d*).

But a petition of right will not lie for unliquidated damages for a wrongful act of the Crown (*e*); nor in respect of lands in a colony (*f*); nor to recover money paid by a foreign power to Her Majesty as compensation for wrongs done to British subjects (*g*); nor for compensation to a military officer for dismissal from his office (*h*).

Form of  
petition.

A petition of right may be intituled in any of the superior Courts in which the subject matter of such petition, or any material part thereof, is cognizable (*i*).

The petition must be addressed to Her Majesty; and if intituled in the Chancery Division, must be marked with the name of the Judge before whom it is intended

(*a*) 23 & 24 Vic. c. 34, ss. 5, 16.

(*b*) *James v. Reg.*, 5 Ch. D. 153.

(*c*) *Thomas v. Reg.*, L. R. 10 Q. B. 31; *Chureward v. Reg.*, L. R. 1 Q. B. 173.

(*d*) *Re Brain*, L. R. 18 Eq. 389.

(*e*) *Tobin v. Reg.*, 12 W. R. 838.

(*f*) *Holmes v. Reg.*, 2 J. & H. 527; *Reiner v. Salisbury*, 2 Ch. D. 378.

(*g*) *Rustomjee v. Reg.*, 24 W. R. 428.

(*h*) *Re Tufnell*, 3 Ch. D. 164.

(*i*) 23 & 24 Vic. c. 34, s. 1.

to be prosecuted (*k*). It must state the name and address of the suppliant, and of his solicitor (if any); and must set forth with convenient certainty the facts entitling the suppliant to relief; and must be signed by such suppliant, his counsel, or solicitor (*l*). *Seemle*, it is wrong to join any one with the Queen as a respondent (*m*).

The petition must be left with the Home Secretary, for <sup>Fiat.</sup> Her Majesty's fiat, which is obtained without fee (*n*).

The petition, with the fiat thereon, together with a <sup>Filing petition.</sup> printed copy of such petition and fiat (if the petition is in writing) must be filed in the Filing and Record Department of the Central Office (*o*).

A printed copy, sealed with the seal of the Filing and <sup>Service.</sup> Record Department, must also be left with the Solicitor of the Treasury, with an endorsement thereon, praying for an answer within twenty-eight days (*p*).

Where the petition is for the recovery of property, or any right in or to the same, which has been disposed of by the Crown, a printed and sealed copy of the petition and fiat shall be served upon the person in possession or enjoyment of such property or right, endorsed with a notice requiring him to appear within eight days, and to answer within fourteen days (*q*).

The person so served shall, within the time so limited, <sup>Appearance and pleading.</sup> if he intends to contest the petition, enter an appearance in the form set forth in the schedule to the Act; and shall plead or demur to the petition within the time

(*k*) Gen. Ord. 1st Feb. 1862, r. 2.

(*l*) 23 & 24 Vic. c. 34, s. 1. For form of petition, see Schedule to Act; and *post*.

(*m*) *Kirk v. Reg.*, L. R. 14 Eq. 558.

(*n*) 23 & 24 Vic. c. 34, s. 2.

(*o*) Gen. Ord. 1st. Feb. 1862, r. 1; 42 & 43 Vic. c. 78, s. 5;

R. S. C. Dec. 1879.

(*p*) 23 & 24 Vic. c. 34, s. 3; Gen. Ord. 1 Feb. 1862, r. 3. For form of endorsement, see Schedule to Act, No. 2; *post*.

(*q*) 23 & 24 Vic. c. 34, s. 5; Gen. Ord. 1 Feb. 1862, r. 3. For form of endorsement, see Schedule to Act, No. 3; *post*.

specified in such notice, or such further time as the Court or Judge may allow (*r*).

The time for pleading or demurring on behalf of Her Majesty is twenty-eight days from the delivery of the copy to the Solicitor of the Treasury, unless such time is extended by the Court or Judge (*s*). The Crown may plead and demur without leave (*t*).

**Interrogatories.** Interrogatories may be served upon any person or persons who may be required to plead or answer thereto other than Her Majesty's Attorney-General (*u*).

The Crown is entitled to discovery from the suppliant (*v*); but a suppliant is not entitled to discovery from the Crown (*x*).

**In formâ pauperis.**

A person may prosecute, or may be admitted to make his defence *in formâ pauperis* to any petition of right in the Chancery Division (*y*).

**Costs.**

Costs may be given to or against the Crown and other parties (*z*).

**New procedure applicable.**

The procedure for the time being in force is to apply to petitions of right, unless the Court shall otherwise order (*a*). It seems, therefore, that the new procedure under the Judicature Acts will apply to petitions of right; and that they will now be answered by a statement of defence (*b*).

**Old practice may be followed.**

Notwithstanding the Act, a suppliant may still proceed according to the practice before the passing of the Petitions of Right Act, 1860 (*c*).

(*r*) 23 & 24 Vic. c. 34, s. 5.

(*s*) *Ibid.*, s. 4.

(*t*) *Tobin v. Reg.*, 11 W. R. 701, 915.

(*u*) Gen. Ord. 1 Feb. 1862, r. 4.

(*v*) *Tomline v. Reg.*, 27 W. R. 651.

(*x*) *Thomas v. Reg.*, L. R. 10 Q. B. 44.

(*y*) Gen. Ord. 1 Feb. 1862, r. 4.

(*z*) 23 & 24 Vic. c. 34, ss. 11, 12; *re Brain*, L. R. 18 Eq. 389; *James v. Reg.*, L. R. 17 Eq. 502; *re Trufnell*, 3 Ch. D. 164.

(*a*) 23 & 24 Vic. c. 34, s. 7.

(*b*) *Tomline v. Reg.*, 27 W. R. 651.

(*c*) 23 & 24 Vic. c. 34, s. 18.

## CHAPTER XLI.

### CHARGING ORDER.

WHERE a person against whom any judgment or order for the recovery or payment of money has been obtained, has any interest whether in possession, remainder, or reversion, and whether vested, or contingent, in any government stocks, funds, or annuities, or in any stock or shares of any public company in England (whether incorporated or not), standing in his own name, or in the name of any person in trust for him, or in the name of the Chancery Paymaster, or has any interest in the dividends, interest, or annual produce of any such stocks, funds, shares, or annuities, any Divisional Court or any Judge may order the interest of the judgment debtor therein to stand charged with the payment of the amount for which judgment was recovered, and interest thereon. But no proceedings can be taken to have the benefit of the charge until after the expiration of six calendar months from the date of the order (a).

When an order may be obtained.

The Act does not seem to apply to cash in Court (b); nor can a charging order be obtained for an unascertained sum, nor for costs, until they have been taxed (c); but an

(a) 1 & 2 Vic. c. 110, s. 14; 3 & 4 Vic. c. 82, s. 1; R. S. C. Ord. XLVI. 1.

(b) But see *re Prince*, Seton, 305; see, however, *Hopewell v.*

*Barnes*, 1 Ch. D. 630: which appears to be the same case.

(c) *Widgery v. Tepper*, 6 Ch. D. 364.

order may be obtained in respect of a judgment debt made payable on a future day (*d*).

Application  
how made.

The application for a charging order may be made by petition or summons, and in the Chancery Division it appears to be generally made by petition (*e*). The application is made in the first instance, *ex parte*, and without notice to the judgment debtor, and is merely for an order to show cause, and to restrain any dealing with the fund until the order is made absolute or discharged (*f*).

Evidence.

The application should be supported by evidence as to the title of the applicant to the debt, and as to the debtor's title to, or interest in, the property sought to be charged. If the fund is in Court, the Chancery Paymaster's certificate thereof will also be required (*g*).

Form of order.

The order made on such application usually directs that the fund shall stand charged with the payment to the applicant of the debt and interest, unless the debtor within the time therein specified after service of the order show good cause to the contrary; and it restrains, in the meantime, any dealing with the fund, without notice to the applicant, if the fund is in Court, or absolutely, if it is not (*h*).

Service.

The order *nisi*, when passed and entered, should be served on the debtor, his solicitor, or agent (*i*). If it affect a fund in Court, it should be lodged with the Chancery Paymaster. If it affect any government stock not in Court, it should be served on the chief accountant of the Bank of England. If it affect the stock or

(*d*) *Bagnall v. Carlton*, 6 Ch. D. 130.

(*e*) *Daniell*, 901; *Seton*, 305; *Widgery v. Tepper*, 6 Ch. D. 364; and see Rules of November 1878, as to applications in other Divisions.

(*f*) 1 & 2 Vic. c. 110, s. 16.

(*g*) *Daniell*, 901; *Wood v. Vincent*, 4 Beav. 419; *Quarman v. Williams*, 5 Beav. 133; *Lambert v. Hutchinson*, 13 L. J. Ch. 336.

(*h*) *Seton*, 305, *et seq.*

(*i*) 1 & 2 Vic. c. 110, s. 15; *re Paragon Mining Co.*, 10 W. R. 76.



shares of any public company, it should be served on the authorised agent of such company (*k*).

If, within the time limited for showing cause, the debtor appear and show sufficient cause to the contrary, the order may be discharged; or if sufficient cause be not shown, the order may be made absolute. If the debtor does not appear, the order may be made absolute, on production of an affidavit of service; and the order absolute must be served in the same manner as the order *nisi* (*l*). Order absolute.

Although a judgment creditor cannot take proceedings to have the benefit of the charge until after the expiration of six calendar months from the date of the charging order (*m*), he may take proceedings to protect his interest in the meantime (*n*). Proceedings to protect fund.

The Court will not, on the petition of a judgment creditor, who has obtained a charging order, direct the fund to which it has been applied to be paid out to him without the judgment debtor's consent (*o*). Payment out.

### *Stop Order.*

Stop orders were formerly obtained on petition; but the application is now in all cases made by summons (*p*). The costs of a petition will not be allowed (*q*); and a petitioner will be ordered to pay the difference between the costs of a summons, and the costs of a petition (*r*).

- |                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(<i>k</i>) 1 &amp; 2 Vic. c. 110, s. 15.<br/>         (<i>l</i>) Daniell, 902; <i>Stanley v. Bond</i>, 8 Beav. 50.<br/>         (<i>m</i>) 1 &amp; 2 Vic. c. 110, s. 14.<br/>         (<i>n</i>) <i>Watts v. Jefferyes</i>, 3 Mac. &amp; G. 422, 424; <i>Bristed v. Wilkins</i>, 3 Hare, 235, 239; <i>Reece v. Taylor</i>, 5 De G. &amp; S. 480.<br/>         (<i>o</i>) <i>Whitfield v. Prickett</i>, 13 Sim.</p> | <p>259; and see <i>Pearse v. Brooke</i>, W. N. (1870), 216.<br/>         (<i>p</i>) <i>Wrench v. Wynne</i>, 17 W. R. 198; <i>Walsh v. Wason</i>, 22 W. R. 676.<br/>         (<i>q</i>) <i>Walsh v. Wason</i>, <i>supra</i>.<br/>         (<i>r</i>) <i>Wellesley v. Mornington</i>, 41 L. J. Ch. 776.</p> |
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## CHAPTER XLII.

### MARRIED WOMEN.

#### *Married Women's Property Act, 1870.*

Section 10.  
Policy money<sup>s</sup>.

A POLICY of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed a trust, for the benefit of his wife for her separate use, and of his children, or any of them, according to the interest so expressed; and shall not so long as any object of the trust remains be subject to the control of the husband, or his creditors, or form part of his estate. When the sum secured by the policy becomes payable, or at any time previously, a trustee thereof may be appointed by the Chancery Division, or by the Judge of the County Court of the district in which the insurance office is situated; and the receipt of such trustee shall be a good discharge to the office (a).

Where a person effected a policy upon his own life under the Act for the benefit of his wife for her separate use, and of his children as he should appoint, and died without having exercised the power of appointment, leaving his widow and one infant child, it was held that the policy-moneys must be paid as to one moiety to the widow, and

(a) 33 & 34 Vic. c. 93, s. 10. Married Women's Property Acts,  
For form of petition, see Griffith's p. 83; and *post*.

that the other moiety must be invested in trust for the child, and the income paid during his minority to the widow for his maintenance (*b*).

Where the policy was effected for the benefit of the wife and children, but the interest they were to take was not expressed upon the face of the policy, the moneys, after payment thereof of costs, were directed to be invested, and the income paid to the widow for life for her separate use without power of anticipation, with remainder to the children on attaining twenty-one or marriage, with remainder to the widow absolutely (*c*).

But where the husband had died insolvent, and the wife was in poor circumstances, so that the income of the policy-moneys was not sufficient to support her and the children, the moneys were distributed as if the husband had died intestate (*d*).

The application is made by petition or summons (*e*).

If it be proved that the policy was effected, and the premiums paid by the husband, with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid (*f*).

A married woman or a woman about to be married, may apply to the Bank, that any sum forming part of the public funds and not being less than £20, to which she is entitled or which she is about to acquire, may be transferred into her name or into her intended name, as a married woman entitled to her separate use; and on such sum being entered accordingly, the same is to be deemed to be her separate property, and to be transferred,

Section 3,  
Transfer of  
stock.

(*b*) *Re Edwards*, 28 W. R. 72.

(*c*) *Re Mellor*, 6 Ch. D. 127; but see next note.

(*d*) *Re Mellor*, 7 Ch. D. 200.

(*e*) *Seton*, 663; *re Edwards*, 28 W. R. 72; *re Mellor*, 6 Ch. D. 127.

(*f*) 33 & 34 Vic. c. 93, s. 10; *Holt v. Everall*, 2 Ch. D. 266.

and the dividends paid, as if she were an unmarried woman (g).

Where the fund is in Court, and the married woman has obtained the proper form from the Bank, the transfer will be directed on the petition of the married woman and her husband (h).

### *Equity to a Settlement.*

A married woman may enforce her equity to a settlement, without any separate proceeding, upon the hearing or further consideration of the action at which an order is made directing payment, transfer, or application of the fund (i). But she may by petition in the action enforce her right before the fund is actually distributable, if the fund to which she is entitled is actually in possession. Thus, where in an administration action, after judgment, but before further consideration, a married woman, entitled to a share of a fund in Court, presented a petition to enforce her equity to a settlement, it was held that she was entitled to an immediate order, although the fund would not be actually distributable until further consideration, and though the amount of her share had not been ascertained (k).

The application may, it seems, be also made at Chambers (l).

(g) 33 & 34 Vic. c. 93, s. 3.

(h) *Re Bartholomew*, 19 W. R. 95; *re Butlin*, 19 W. R. 241; *Frank v. Mackay*, Ir. R. 8 Eq. 93; *re Tanner*, W. N. (1874), 198; Seton, 663. For form of petition,

see Griffith.

(i) 1 Lead. Ca. Eq. 471; Daniell, 86. For form of settlement, see Seton, 675.

(k) *Re Robinson*, 12 Ch. D. 188.

(l) Seton, 673.

## CHAPTER XLIII.

### COMPROMISE.

AN application to compromise proceedings is made by petition where the facts are complicated (*a*), or where infants or other persons under disability are interested (*b*). Cases in which a petition is necessary.

But the Court will not sanction a compromise on behalf of infants or other persons under disability, unless it is shown to be for their benefit; and for this purpose an inquiry may be directed (*c*).

A married woman entitled to property for her separate use without power of anticipation, has power to bind the *corpus* by a compromise (*d*). She may also compromise proceedings relating to a fund in which she has merely a reversionary interest; but upon a petition to sanction such a compromise, she should appear separately from her husband (*e*). A married woman cannot however bind her real estate by a compromise, except by the formalities prescribed by law for that purpose (*f*).

A compromise may be enforced on petition in the original action, where there is a stipulation that the com- Enforcing compromise.

(*a*) *Daniell*, 1434; *Dawson v. Newsome*, 8 W. R. 725; *Douglas v. Douglas*, W. N. (1872), 36. 45; *Fadelle v. Bernard*, 19 W. R. 555; *Seton*, 1536.

(*b*) *Brooke v. Lord Mostyn*, 2 D. 156. (*d*) *Wilton v. Hill*, 25 L. J. Ch.

J. & S. 373; *Gray v. Paull*, 25 W. R. 874; *Seton*, 716. (*e*) *Wall v. Rogers*, L. R. 9 Eq. 58.

(*e*) *Brooke v. Lord Mostyn*, *supra*; and see *Norton v. Steinkopf*, Kay, 696. (*f*) *Nicholl v. Jones*, L. R. 3 Eq.

promise shall be made a rule of Court (*g*), or where the compromise relates solely to the conduct and prosecution of the suit, or involves nothing beyond questions raised in the suit (*h*). In other cases it has been held that an action for specific performance is necessary (*i*); but since the Judicature Act, 1873, the Court can entertain such an application on motion or summons, and, *semble*, by petition (*k*).

(*g*) *Dawson v. Newsome*, 2 Giff. 272; *Tebbutt v. Potter*, 4 Hare, 164.

(*h*) *Pryer v. Gribble*, L. R. 10 Ch. 534; *Scully v. Dundonald*, 8 Ch. D. 658.

(*i*) *Askew v. Millington*, 9 Hare, 65; *Richardson v. Eyton*, 2 D. M.

& G. 79; *Gough v. Herbert*, W. N. (1871), 173; *Pryer v. Gribble*, *supra*.

(*k*) *Eden v. Naish*, 7 Ch. D. 781; *Scully v. Dundonald*, 8 Ch. D. 658; *Potter v. Jackson*, W. N. (1878), 134; but see *Gilbert v. Endean*, 9 Ch. D. 259.

## CHAPTER XLIV.

### DECLARATION OF TITLE ACT, 1862.

UNDER this Act (*a*) any person claiming to be entitled <sup>Who may</sup> to land in possession for an estate in fee simple, either <sup>petition.</sup> absolutely or subject to any incumbrances, estates, or interests, may apply to the Chancery Division of the High Court, by petition in a summary way, for a declaration of title. The Act contains full directions with regard to proceedings thereunder; but as applications under it are so seldom made, it is not thought necessary to state the provisions of the Act in detail.

The words, "out of the suitors' fee fund," in section 42, *Sect. 42.* have been repealed (*b*).

Where the petitioner proves such possession and states *Sect. 6.* such title as, if established, will entitle him to a declaration under the Act, a reference will be ordered to Chambers to establish the title (*c*).

Where a certificate of the petitioner's title had been *Sects. 8, 9, 11.* made by the Chief Clerk, the Court, pursuant to ss. 8, 9, & 11 of the Act, ordered the declaration establishing the petitioner's title to be made at the end of three months; security to be given by the petitioner to the amount of £40 for payment of the costs of any person who might successfully oppose the declaration of title; and notice of

(*a*) 25 & 26 Vic. c. 67.

(*b*) 38 & 39 Vic. c. 66.

(*c*) *Re Roberts*, 22 L. T. N. S.  
262.

the order to be given by advertising it three times, at three days' interval, in three London newspapers (*d*).

Costs.

The costs of proceedings under the Act on behalf of an infant, together with the costs of a partition suit, and of a suit to obtain a declaration of lien, are costs for which a solicitor is entitled to a lien on the fund in Court (*e*).

Service.

Where the petitioner claimed to be entitled to a moiety of an estate subject to a lease, an order was made without serving any person with the petition (*f*).

- |                                                  |                                                 |
|--------------------------------------------------|-------------------------------------------------|
| ( <i>d</i> ) <i>Re Roberts</i> , L. R. 10 Eq.    | 17 Eq. 222.                                     |
| 402.                                             | ( <i>f</i> ) <i>Re Roberts</i> , 22 L. T. N. S. |
| ( <i>e</i> ) <i>Pritchard v. Roberts</i> , L. R. | 262.                                            |



## CHAPTER XLV.

### INVESTMENT ON REAL SECURITIES IN IRELAND.

ANY person authorised to lend money upon real securities in Great Britain may, unless expressly prohibited, lend the same on real securities in Ireland (*a*). But where a minor or unborn child, or person of unsound mind, is or may be interested, the loan must be made by the direction and under the authority of the Chancery Division, to be obtained in any cause or upon petition in a summary way (*b*).

Sanction of Court.

Where the consent of any person is required to the investment, such consent must be obtained (*c*).

A married woman, in order to consent, must appear separately from her husband (*d*).

The petition should be intituled in the matter of the Act; and in the matter of the action, if any; and all parties interested should be served (*e*).

Title and service.

The usual inquiry as to title has been dispensed with (*f*).

(*a*) 4 & 5 Will. IV. c. 29, ss. 1, 5.

534.

(*b*) *Ibid.*, s. 2; *exp. French*, 7 Sim. 510. For form of petition, see *post*.

(*c*) 4 & 5 Will. IV. c. 29, s. 4.

(*e*) *Re Kirkpatrick*, 15 Jur. 941; *ibid.*, 942, n.; *exp. Pawlett*, 1 Phil. 570; *Stuart v. Stuart*, 3 Beav. 430.

(*d*) *Norris v. Wright*, 14 Beav. 291; *Fitzgerald v. Pringle*, 2 Moll.

(*f*) *Re Cotterill*, 17 Sol. J. 165.

## CHAPTER XLVI.

### RECEIVERS.

#### *Mortgage Debenture Act.*

Petition for  
a receiver.

IF within seven days after the interest on any mortgage debenture has become payable, and after demand thereof in writing made upon the company, such interest is not paid, or if within three weeks after the principal has become payable and after demand as aforesaid such principal is not paid, the person entitled to such interest or principal respectively, may apply to the Chancery Division by petition or by summons at Chambers for the appointment of a receiver, and the Court may appoint a receiver to act on behalf of the applicant and the other persons entitled to the company's mortgage debentures (a). The Court may also remove such receiver and appoint another in his stead, and may make orders as to the powers and duties of such receiver, and as to the disposal of the moneys received by him (b).

#### *County Debentures Act, 1873.*

Petition for  
receiver.

If default is made in payment to any person or persons entitled of any sum or sums due on debentures or coupons issued under this Act, and the sum or aggregate of the sums, the payment of which is in default, amount to not

(a) 28 & 29 Vic. c. 78, ss. 42, 44; and see ss. 41, 43. (b) *Ibid.*, s. 45.

less than £500, such person or persons may, instead of or in addition to bringing an action or actions for the sum or sums due, apply to the Chancery Division for the appointment of a receiver (c).

*Railway Companies Act, 1867.*

The Railway Companies Act, 1867, s. 4, restrained judgment creditors from levying execution, and enabled them to petition for a receiver and manager until the year 1868 (d). The General Orders (e) regulating the practice under this section are now spent (f).

(c) 36 & 37 Vic. c. 35, s. 17. As to the name in which a county authority may sue or be sued, see s. 18; and as to service, see s. 19. For form of petition, see Daniell, No. 2313.

(d) Extended to 1875 by 37 & 38 Vic. c. 76.

(e) See L. R. 3 Ch. XXXV.

(f) Morgan, 274. As to arrangements under this Act, see *ante*, p. 201.

## CHAPTER XLVII.

### OBSOLETE PETITIONS.

#### *Guardians and Maintenance.*

Infants.

APPLICATIONS as to guardianship and as to maintenance and advancement of infants are usually made by summons at Chambers (a). But an application for maintenance out of dividends of stock standing in the name of an infant may still, it seems, be made by petition (b).

Persons of  
unsound mind.

The Chancery Division has no power to appoint a guardian of a person of unsound mind, though such a guardian has been appointed on petition. It may, however, direct the income of his property to be applied for his maintenance (c).

#### *Merchant Shipping Act, 1854.*

The Chancery Division has jurisdiction to order a sale of a registered British ship on the application of any person who though owner by transmission, is not qualified to be an owner of a British ship (d). It has also jurisdiction on the application, by petition or otherwise, of any person interested, to prohibit any dealing with a registered

(a) 15 & 16 Vic. c. 80, s. 16 ;  
Cons. Ord. XXXV. 1 (5) ; Seton,  
723, 729.

(b) 1 Wm. IV. c. 65, s. 32 ; re  
*Naish*, 9 L. J. Ch. 252 ; re *Murphy*,  
2 Ir. R. Eq. 24 ; ante, p. 139.

(c) *Re Bligh*, 12 Ch. D. 364 ;

*Vane v. Vane*, 2 Ch. D. 124 ; re  
*Whitby*, W. N. (1877) 208 ; re  
*Brandon*, W. N. (1879) 215 ; and  
see ante, pp. 25, 37.

(d) 17 & 18 Vic. c. 104, ss. 62,  
63, 64.

British ship (*e*). Applications under this Act are not, however, generally made by petition (*f*); and since the Admiralty Division has also jurisdiction under the Act (*g*), it is presumed that such applications will now be made to the Admiralty Division (*h*).

*Copyhold Acts.*

Applications respecting securities or money in Court, under the Copyhold Acts, which were formerly made by petition, are now made by summons at Chambers (*i*).

*Stop Orders.*

Stop orders, as we have already seen, may now be obtained on summons in Chambers (*k*).

(*e*) *Ibid.* s. 65.

(*f*) Seton, 276.

(*g*) 24 & 25 Vic. c. 10, s. 12.

(*h*) See *Nicholas v. Dracachis*, 1

P. D. 72.

(*i*) Ch. Funds Amended Ord.

1874, r. 15.

(*k*) *Ante*, p. 295.

## CHAPTER XLVIII.

### PETITIONS OF COURSE.

THE general practice relating to petitions of course has been already described (*a*). The following are the principal cases in which such petitions may still be presented.

#### *Guardians ad Litem.*

An order, appointing a guardian *ad litem*, may generally be obtained on petition of course at the Rolls in manner before mentioned (*b*).

#### *Lands Clauses Consolidation Act.*

An order to tax conveyancing costs, under section 83 of the Lands Clauses Consolidation Act, may be obtained on petition of course either by the promoters of the undertaking or by the vendor (*c*).

#### *Solicitors.*

An order for delivery and taxation of bills of costs may, as we have already seen, be obtained in certain cases on petition of course (*d*).

An order for leave to change his solicitor may gene-

(*a*) *Ante*, p. 15.

(*c*) *Ante*, p. 87.

(*b*) *Ante*, p. 6 ; Seton, 706 ; but see  
*Settled Estates Act*, *ante*, p. 130.

(*d*) *Ante*, p. 213.

rally be obtained on petition of course by a plaintiff or defendant (e).

A similar order may be obtained to strike a solicitor off the roll at his own request, or to re-admit a solicitor in a like case.

*Conditional Appearance.*

Where a person who has been served wishes to set aside a writ or counterclaim, or to object to the service as irregular, he must not enter an ordinary appearance, which would be a waiver of the objection, but he must obtain an order on petition or motion of course for leave to enter a conditional appearance with the Registrar (f).

*Appearance after Judgment.*

Leave to appear after judgment may be obtained on petition of course, if the plaintiff consent and the defendant submit to be bound by the proceedings (g).

*Entering Judgment nunc pro tunc.*

Where the time for entering a judgment or order has expired, an order may be obtained on petition of course at the Rolls to enter the said judgment or order *nunc pro tunc* (h).

*Attending Proceedings.*

When a person is served with notice of a judgment, he may obtain an order of course upon petition at the Rolls for liberty to attend the proceedings under the

(e) *Ante*, p. 221.

(f) *Maclean v. Dawson*, 4 De G. & J. 154; *The Vivar*, 2 P. D. 29; *Seton*, 1626; *Daniell*, 460; see also *Ashley v. Taylor*, 10 Ch. D. 768.

(g) *Seton*, 1627.

(h) *Seton*, 1547; *Daniell*, 878; *Lawrence v. Richmond*, 1 Jac. & W. 241; *Donne v. Lewis*, 11 Ves. 601.

judgment (*i*) ; but such an order does not entitle him to costs of attendance (*k*).

*Satisfaction of Lis Pendens.*

The satisfaction or discharge of a registered *lis pendens*, order, or writ of execution, may be obtained by filing an acknowledgment under the Act (*l*) ; but the practice of getting the entry satisfied under an order obtained on a petition of course is still frequently resorted to. The order, however, can only be obtained as of course where the plaintiff or execution creditor petitions or consents to the petition. If the plaintiff refuse to apply or consent, the order to enter satisfaction of a *lis pendens* must be obtained on special petition, motion, or summons, of which notice should be given to the plaintiff (*m*). The petition should be entitled in the matter of the 30 & 31 Vic. c. 47, and in the matter of the registered action (*n*).

*In forma pauperis (Proceedings).*

Leave to sue.

An application for an order to be admitted to sue *in forma pauperis* is usually made by petition of course, at the Rolls. But the order cannot be obtained as of course where the application is by a married woman (*o*), or an infant (*p*), or by a person not a party to the action to prosecute a claim in the action (*q*) ; nor where it is for

(*i*) Daniell, 363 ; *Colyer v. Colyer*, 11 W. R. 355. Where the person is an infant or of unsound mind, the applications for a guardian, and for leave to attend, are usually combined in one petition.

(*k*) *Sharp v. Lush*, 10 Ch. D. 468.

(*l*) 23 & 24 Vic. c. 115, sect. 2.

(*m*) *Pooley v. Bosanquet*, 7 Ch. D. 541 ; Seton, 1168.

(*n*) *Clutton v. Lee*, 7 Ch. D. 541.

(*o*) *Coulsting v. Coulsting*, 8 Beav. 463 ; *re Foster*, 18 Beav. 525.

(*p*) *Lindsay v. Tyrrell*, 2 De G. & J. 7.

(*q*) Seton, 1646.



leave to prosecute proceedings under the Trustee Relief Act (r), or under the Infant Custody Act (s). In such cases the application is made by an *ex parte* motion, and is not of course.

The petition should be presented by the plaintiff to the Master of the Rolls, and should contain a short statement of his case and of the proceedings, if any, in the action, and should pray that the plaintiff be admitted to sue *in formâ pauperis*, and that counsel and a solicitor may be assigned to him.

The petition must be under-written with a certificate signed by counsel that he conceives the case to be proper for relief in this Court (t); and must be supported by an affidavit sworn by the plaintiff himself (u) that he is not worth the sum of £5, his wearing apparel and the subject matter of the suit alone excepted (x).

The petition and certificate, and an office copy of the affidavit, and usually a copy of the writ, are lodged with the under-secretary at the Rolls. The order should be served as soon as possible on the opposite party (y); and should be lodged at the Central office (z).

The rules laid down with regard to persons suing *in formâ pauperis* apply to persons defending in that character; but the petition in the case of a defendant is much shorter than in the case of a plaintiff, and need not contain a statement of the case, nor be accompanied by a certificate of counsel (a). A defendant

Leave to defend.

(r) *Re Money*, 13 Beav. 109.  
 (s) *Exp. Hakewill*, 3 D. M. & G. 116.  
 (t) Cons. Ord. VII. 8.  
 (u) *Wilkinson v. Belsher*, 2 Bro. C. C. 272.  
 (x) *Dresser v. Morton*, 2 Phil. 286; *Perry v. Walker*, 1 Coll. 233; *Allen v. McPherson*, 5 Beav. 469;

*Boddington v. Woodley*, 5 Beav. 555; *Goldsmith v. Goldsmith*, 5 Hare, 125.  
 (y) *Ballard v. Catlings*, 2 Keen, 606.  
 (z) *Daniell*, 41; 42 & 43 Vic. c. 78; R. S. C. Dec. 1879.  
 (a) Cons. Ord. VII. 9—11; XL. 5; Regulation to Ord. IV. 2;

need not enter an appearance before applying for the order (b).

*Distringas (discharge of).*

A writ of distringas may at any time be discharged by an order to be obtained on petition of course by the person on whose behalf the writ was issued. If the application is by any other person interested in the stock, it must be made by motion on notice or by petition duly served (c).

*Leave to examine witness de bene esse.*

An order for leave to examine a witness *de bene esse* may be obtained on petition of course at the Rolls whenever the witness is seventy years of age, or is dangerously ill, or is about to go abroad. If the application is made on other grounds, it cannot be made as of course. Every application, whether of course or otherwise, must be supported by an affidavit of the facts on which the application is founded (d).

*Documents deposited in Court.*

Where the purposes for which documents have been deposited in Court have been satisfied, the person depositing them may obtain an order for their delivery out to him (e). Upon the completion of a purchase, the solicitor conducting the sale may obtain an order for delivery out of the deeds to the purchaser (f). These orders may, by consent, be obtained on petition of course at the Rolls. A copy of the order, together with a receipt, and also the

*Nowell v. Whitaker*, 6 Beav. 407.

(b) Braithwaite's Pr. 563.

(c) Cons. Ord. XXVII. 3

(d) Daniell, 817, 818.

(e) *Dunn v. Dunn*, 7 D. M. & G. 25.

(f) Daniell, 1176.

original order, must be produced at the office on the application for delivery out (*g*).

Where the production of documents deposited in Court is required elsewhere than in the Chancery Division or its offices, an order is required, which may be obtained on petition of course at the Rolls supported by an affidavit that the production of the documents is necessary for the purposes of evidence (*h*).

*Evidence.*

An order for leave to read the evidence or proceedings in another action may be obtained on petition of course at the Rolls. The actions must, however, be between the same parties or their privies, and the issue must be the same; but, by consent, such an order may be obtained, where the parties are not the same. The order must be served on the adverse party, and is always made "saving all just exceptions" (*i*).

Reading evidence in another action.

Where depositions have been taken in a foreign language, an order for the appointment of a translator of the depositions, and for leave to use them at the hearing, may be obtained on petition of course at the Rolls (*k*).

Appointing translator.

*Arbitration.*

An order for the attendance of witnesses, and production of documents before an arbitrator, may be obtained as of course (*l*); and by consent, an order of course may be obtained for delivery out to the arbitrator of documents deposited in Court (*m*).

(*g*) Braithwaite's Pr. 507.

(*h*) Braithwaite's Pr. 506, 514.

(*i*) Daniell, 764, 767.

(*k*) *Ibid.* 813; 1 Newl. 439.

(*l*) *Re Rickotts*, 9 L. T. N. S. 405; Daniell's Forms, No. 1937.

(*m*) Daniell, 2003.

*Enforcing Return of Writs by Sheriff.*

Where the Sheriff or other officer does not make his return of the writ directed to him, an order may be obtained on petition of course at the Rolls, directing the sheriff forthwith to make the return. The order is served on the sheriff, under-sheriff, or deputy-sheriff; and if it be not obeyed, an order *nisi* may be obtained on *ex parte* motion, for the sheriff's committal (n).

(n) Daniell, 394; Seton, 1571.

# APPENDIX

## OF

### FORMS AND PRECEDENTS.

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#### PETITION IN AN ACTION.

In the High Court of Justice,  
 Chancery Division.  
*[Name of Judge.]*

1.  
 Petition for  
 payment out.

Between A. B. . . . . Plaintiff,  
 and  
 C. D. . . . . Defendant.

To Her Majesty's High Court of Justice.

The humble petition of E. P. of ——— and G. his wife  
 Showeth as follows :—

1. By his will dated the ——— day of ——— G. H. the testator in the pleadings in this action mentioned, bequeathed £1000 consolidated £3 per cent. annuities upon trust for such of the children of K. F. as should be living at the time of his decease and should live to attain the age of twenty-one years.

2. By the judgment made on the hearing of this action, dated the ——— day of ——— the trusts of the said will were directed to be carried into execution, and the usual accounts and inquiries were directed to be taken and made, and an inquiry was also directed as to the children of the said K. F.

3. By the Chief Clerk's certificate dated the ——— day of ———, and filed on the ——— day of ———, it was amongst other things found that the said K. F. had one child only, namely your petitioner G. P.

4. By an order dated the ——— day of ———, and made by

the Vice-Chancellor Sir —, on the hearing of this cause on further consideration, £—— consolidated £3 per cent. annuities which then represented the said legacy of £1,000 like annuities after raising and paying thereout the legacy duty payable in respect thereof, were directed to be carried over to the credit of this cause, B. v. D. 1878, B. 100, "The account of the children of K. F.," and the dividends as they accrued thereon have from time to time been laid out in like annuities and accumulated.

5. Your petitioner G. P. attained the age of twenty-one years on the — day of —, and intermarried with your petitioner E. P. on the — day of —.

6. There is now in Court to the credit of this action, B. v. D. 1878, B. 100, "The account of the children of K. F." the sum of £—— consolidated £3 per cent. annuities and £—— cash.

7. All duty payable in respect of the said legacy has been duly paid.

8. No settlement or agreement for a settlement was made before or upon or has been made since the said marriage of your petitioners.

Your petitioners therefore humbly pray

1. That the said sum of £—— bank £3 per cent. annuities may be sold.
2. That it may be referred to the Taxing Master to tax the petitioners' costs of this application as between solicitor and client.
3. That out of the proceeds of such sale and the said sum of £—— cash and any interest to accrue on the said annuities, the said costs when taxed may be paid.
4. That the residue of the said proceeds, cash and interest, may be paid to your petitioner E. P. in right of your petitioner G. his wife.

Or that such other order may be made in the premises as to your lordship shall seem meet.

And your petitioner will ever pray, &c.

NOTE.—It is, &c. (*ante*, p. 19).

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## TRUSTEE RELIEF ACT.

In the [*ante, form, 1.*]

2.  
Petition for  
payment out.  
(a)

In the matter of the trusts of the sum of £1,000  
bequeathed by the will of A. B. in favour of C. D.

and

In the matter of the Act 10 & 11 Victoria, chapter 96, intituled "An Act for the better securing trust funds, and for the relief of trustees."

[*add where applicable*: And in the matter of the Act 12 & 13 Victoria, chapter 74, intituled "An Act for the further relief of trustees."]

To Her Majesty's High Court of Justice.

The humble petition of C. D. of, &c., Spinster,  
Showeth as follows :

1. The trust fund to which this petition relates, was paid and transferred into Court to the credit of the above-mentioned matter on the affidavit of — filed therein on the — day of —.

2. The said affidavit stated, amongst other things, that [*set out the material parts of the affidavit, namely, those describing the trusts, the interests of the persons entitled, the difficulty which caused the payment in, and the payment in. See ante, p. 38.*]

3. The said trust fund is now represented by the sum of £— consolidated £3 per cent. annuities, and £— cash standing to the credit of the said matter.

4. Your petitioner is the person referred to in the will of the said testator and in the said affidavit as C. D., daughter of —.

5. Your petitioner attained the age of twenty-one years on the — day of —; and thereupon became absolutely entitled to the said trust fund.

6. The office of your petitioner's solicitor, Mr. —, situate at —, is the place where your petitioner may be served with any petition or summons, or notice of any proceeding or order relating to the said trust fund (*ante, p. 38*).

(a) For other forms, see Daniell & Barry's Stat. Jur.

7. The said trust fund is liable to legacy duty. No part of such duty has yet been paid (*ante*, pp. 31, 32).

Your petitioner therefore humbly prays as follows :

1. That the costs of your petitioner and of the respondents of and incidental to this application, may be taxed by the Taxing Master as between solicitor and client (*b*).
2. That so much of the said £—— consolidated £3 per cent. annuities standing to the credit of "The trusts of (*set out title of account*) as with the said sum of £—— cash standing to the same credit, and any dividends to accrue on the said annuities, will be sufficient to raise the said costs when taxed, and also the assessed amount (to be verified by affidavit) of the legacy duty payable in respect of the said trust fund may be sold.
3. That out of the money to arise by such sale the said costs may be paid, and the amount of the said legacy duty may, upon the requisition of the Commissioners of Inland Revenue, be transferred or carried over to the account of the Receiver-General of Inland Revenue at the Bank.
4. That the residue of the said consolidated £3 per cent. annuities may be transferred to your petitioner C. D., spinster.

Or that such other order, &c. (*ante*, p. 316.)

And your petitioner will ever pray, &c.

NOTE. It is intended to serve this petition  
on —— in the petition named (*c*).

(*b*) As to costs, see *ante*, pp. 41-43.

(*c*) As to service, see *ante*, pp. 38-41.



## LEGACY DUTY ACT.

In, &c. (*ante*, form 1).

3.  
Petition for  
payment out.

In the matter of A. B., an infant [*or other the account to which the fund stands*]

and

In the matter of the Act 36th George the Third, chapter 52, intituled "An Act for repealing certain duties on legacies and shares of personal estates, and for granting other duties thereon in certain cases."

To Her Majesty's High Court of Justice.

The humble petition of the above-named A. B. of  
—, late an infant [*or as may be*]

Showeth as follows :—

1. [*State the will, death, and probate, or the intestacy, under which the petitioner became entitled*].

2. In consequence of the infancy of your petitioner [*or as the case may be*], the said — on or about the — day of — paid into Court to the credit of "In the matter of A. B. an infant" the sum of £—, to which your petitioner was entitled as aforesaid.

3. The said sum of £— was invested in the sum of £— consolidated £3 per cent. annuities ; and the same, with the dividends and accumulations of dividends thereon, is now represented by the sums of £— like annuities and £— cash, respectively standing to the credit of the said matter.

4. Your petitioner attained the age of twenty-one years on the — day of —.

Your petitioner therefore humbly prays that the sums of £— consolidated £3 per cent. annuities and £— cash in Court to the credit of "In the matter of A. B. an infant," may be respectively transferred and paid to your petitioner A. B.

Or that such other order, &c. [*ante*, p. 316.]

And your petitioner will ever pray, &c.

NOTE. It is not intended to serve this petition on any person.

## PARLIAMENTARY DEPOSITS.

4.  
Petition for  
payment out.  
(d)

In the [*ante*, form, 1.]

In the matter of *Ex parte* the undertaking of the  
—— Railway Bill

and

In the matter of the Act 9th and 10th Victoria,  
chapter 20, intituled "An Act to amend an Act of  
the second year of her present Majesty for providing  
for the custody of certain moneys paid in pursuance  
of the Standing Orders of Parliament by subscribers  
to works or undertakings to be effected under the  
authority of Parliament."

To Her Majesty's High Court of Justice.

The humble petition of, &c. [*ante*, p. 48].

Showeth as follows :—

1. In the session of the 39th and 40th years of the reign of  
her present Majesty your petitioners introduced a bill into  
Parliament for authority to construct a railway from —— to  
——.

2. Pursuant to the Standing Orders of Parliament, and of a  
warrant or order issued in pursuance thereof, your petitioners  
on or about the —— day of —— paid the sum of £—— into  
Court to the credit of "*Ex parte* the undertaking of the ——  
Railway Bill."

3. By the —— section of the said bill it was provided that  
the said sum so deposited should not be paid or transferred to  
the persons named in the said warrant or order unless, &c.

4. The said bill received the Royal assent on the —— day  
of ——. The Act founded thereon is the —— ; and the said  
Act authorised the said undertaking to be made.

5. The railway so authorised to be made by the said Act has  
for some time past been opened by the said company for the  
public conveyance of passengers, though the said two years  
from the passing of the Act has not yet expired.

Your petitioners therefore humbly pray that the said  
sum of £—— cash in Court to the credit of "*Ex parte*

(d) For another form, see Daniell.

the undertaking of the ——— Railway Bill " may be paid to your petitioners (e).

Or that such other order, &c. [*ante*, p. 316].

And your petitioners will ever pray, &c.

NOTE. It is not intended to serve this petition on any person.

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[*Proceed as in last form to end of par. 2*].

Your petitioners therefore humbly pray that the said sum of £—— in Court to the credit of "*Ex parte* the undertaking of the ——— Railway Bill" may be laid out in bank £3 per cent. annuities, and that the interest and accumulations of interest thereon may be laid out in like manner.

5.  
Petition for investment of deposit.

Or that, &c. [*conclude as in last form*].

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NATIONAL DEBT ACT.

In, &c. [*ante*, form, 1].

*Ex parte* A. B.

6.  
Petition for re-transfer.

In the matter of the National Debt Act, 1870.

To Her Majesty's High Court of Justice.

The humble petition of A. B., of, &c. [*ante*, p. 55],

Showeth as follows :—

1. [*Show how the fund arose*.]

2. The dividends upon the said annuities were duly received by ——— down to and including the dividend due in respect thereof in the month of ———, 18—; since which time no dividends have been received in respect thereof; and in the year ———, in consequence of the dividends being unclaimed, the said annuities and the dividends then due thereon were in pursuance of the provisions of the said Act of Parliament carried over and have ever since been and are now standing to the account of the Commissioners for the Reduction of the National

(e) As to payments to nominees, see *ante*, p. 48.

Debt in the books of the Governor and Company of the Bank of England.

3. [*Show title of petitioner.*]

Your petitioner therefore humbly prays that upon payment by your petitioner to Her Majesty's Attorney-General and the Commissioners for the Reduction of the National Debt of their costs of this application and relating thereto, to be taxed in case the parties differ, the sum of £—— Consolidated £3 per cent. Annuities now standing to the account of the Commissioners for the Reduction of the National Debt in the books of the Governor and Company of the Bank of England, with all dividends accrued due thereon since the transfer of such stock to the said Commissioners, may be transferred and paid by the said Commissioners to your petitioner (*f*).

Or that such other order, &c. [*ante*, p. 316].

And your petitioner will ever pray, &c.

NOTE. It is intended to serve this petition on [*ante*, p. 54].

LANDS CLAUSES CONSOLIDATION ACT.

7.  
Petition for  
interim  
investment.  
(*g*)

In, &c. [*ante*, form, 1].

In the matter of the will of —— deceased,  
and

In the matter of the [*short title of the special Act*],  
and

In the matter of the Lands Clauses Consolidation Act,  
1845.

To Her Majesty's High Court of Justice.

The humble petition of, &c. [*ante*, p. 58].

Showeth as follows :—

1. [*Set out will showing the interest of the petitioner.*]

(*f*) As to costs, see *ante*, p. 56.      (*g*) For other forms, see Daniell  
As to accumulations, see *ante*, p. 55.      & Barry's Stat. Jur.

2. [*State death of testator and probate.*]

3. By the ——— Railway Act with which the Lands Clauses Consolidation Act was incorporated, the ——— Railway Company were empowered to make the railway therein mentioned, and to take certain lands of which the said hereditaments formed part.

4. The said company in exercise of the powers vested in them by the said Acts or one of them, gave notice to your petitioner that they required for the purposes of their said undertaking certain lands situate at ———, forming part of the lands so devised to your petitioner for life as aforesaid, and that the said company desired to treat for the purchase thereof.

5. The sum of £—— has been agreed upon between your petitioner and the said company as the amount to be paid as the purchase-money or compensation for the said premises, which sum has been determined by valuation pursuant to the provisions of the Lands Clauses Consolidation Act.

6. On the ——— day of ——— the said company paid the said sum of £—— into Court to the credit of [*set out title of account*], and which sum is now standing to the like credit.

7. By an indenture, dated, &c., and made between, &c., the said lands and premises were duly conveyed to the said company, their successors and assigns [*ante*, p 58].

8. Your petitioner is not aware of any right in any other person, or of any claim made by any other person to the dividends on the said sum of £—— when invested [*ante*, p. 59].

Your petitioner therefore humbly prays as follows:—

1. That the said sum of £—— cash in Court to the credit of (*state account*), may be invested in Consolidated £3 per cent. Annuities, and that the said sum when so invested may be carried over to the credit of the said matter to an account to be entitled “The account of the devisees of the will of ———.”
2. That the dividends to accrue on the said annuities during the life of your petitioner may be from time to time paid to your petitioner until further order.
3. That pursuant to the 80th section of the Lands Clauses Consolidation Act, the said company may

be ordered to pay to your petitioner his costs, charges, and expenses, of and incident to the purchase or taking of the said lands and of and incident to this application and consequent thereon respectively ; such costs, charges, and expenses to be taxed in case the parties differ [*ante*, p. 79].

Or that such other order, &c. [*ante*, p. 316].

And your petitioner will ever pray, &c.

NOTE. It is intended to serve this petition on the — company in the petition named [*ante*, p. 61].

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[*Proceed as in last form down to, and including par. 7.*]

8.  
Petition for  
re-investment  
in land.

8. [*State order for interim investment and the investment.*]

9. Your petitioner on behalf of the parties interested under the said will has subject to the approval of this honourable court entered into an agreement dated, &c., with —, of —, for the purchase of certain freehold hereditaments at —, comprising, &c., for the sum of £ —

10. The said proposed purchase is a fit and proper investment for the said sum of £—; and your petitioner is desirous that the same should be approved by this honourable Court ; and that the said sum of £— may be raised out of the said £— bank £3 per cent. annuities.

11. Your petitioner is not aware of any right, &c. [*See par. 8 preceding form and ante*, p. 59.]

Your petitioner therefore humbly prays as follows :—

1. That the said proposed purchase of the said hereditaments may be approved as a proper investment of the said sum of £—.
2. That the usual inquiry may be ordered to be made as to the title to the said hereditaments.
3. That in case such title shall be approved a proper conveyance of the said hereditaments to the uses of the said will may be directed to be settled.

4. That upon the due execution thereof by the proper parties, the said sum of £—— may be directed to be raised out of the said sum of £—— bank £3 per cent. annuities, and be paid to such person or persons as shall be certified to be entitled to receive the same.
5. That the rents and profits of the said hereditaments after the said purchase and the interest to accrue on the residue of the said bank annuities during the life of your petitioner may from time to time be paid to your petitioner, or to his legal personal representative until further order.
6. That pursuant to the 80th section of the Lands Clauses Consolidation Act, 1845, the said —— Company may be ordered to pay to your petitioner his costs as thereby provided including therein all reasonable charges and expenses of and incident to the said investment in the purchase of the said —— hereditaments, and of this application and of all proceedings relating thereto; such costs, charges, and expenses to be taxed in case the parties differ.

Or that such other order, &c. [*ante*, p. 316].

And your petitioner will ever pray, &c.

NOTE. It is intended to serve, &c. [*See preceding form.*]

In the High Court of Justice.  
Chancery Division.

[*Title as in petition.*]

I ——, of ——, make oath and say as follows :—

1. [*Verify the title of the petitioner.*]

2. I am not aware of any right in any other person than myself, or of any claim made by any other person than myself to the said sums of £—— bank £3 per cent. annuities, and

9.  
Affidavit as to  
title. (*h*)

£—— cash in the petition respectively mentioned, or to any part or parts thereof respectively [*or, if the petitioner is aware of any such right or claim, state or refer to and except the same*].

Sworn, &c.

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10.

Petitions of  
course to tax  
costs under  
sect. 83. (i)

In the High Court of Justice  
Chancery Division.

In the matter of, &c. [*Set out title of Special Act.*]  
and

In the matter of the Lands Clauses Consolidation  
Act, 1875.

To Her Majesty's High Court of Justice.

The humble petition of the —— Railway Company.  
Sheweth as follows :—

1. In pursuance of the powers vested in them by the said acts, your petitioners purchased from A. B. of —— certain lands situate at ——, for the purposes of their said railway.

2. The said A. B. has delivered to your petitioners his bill of costs of and incidental to the conveyance of such lands to your petitioners.

3. Your petitioners and the said A. B. cannot agree as to the amount of the said bill of costs, and your petitioners are therefore desirous of having the same taxed.

Your petitioners therefore humbly pray that it may be referred to the taxing master to tax the said bill of costs, and that all usual directions may be given.

And your petitioner will ever pray, &c.

(i) *Ante*, p. 87.

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SETTLED ESTATES ACT (k).

In the [*ante, form, 1*].

11.  
Petition for a  
sale.

In the matter of estates settled by A. B. [*or A. B. and others*] by will [*or deed*] dated the — day of —, consisting of certain lands [*or messuages or tenements*] in — in the parish of —, in the county of — [*ante, p. 114*].

and

In the matter of the Settled Estates Act, 1877.

To Her Majesty's High Court of Justice :

The humble petition of [*tenant for life*] of — [*ante, p. 111*].

Showeth as follows :

1. [*State will or settlement, probate or marriage, &c.*].
2. [*Give a detailed description of the property, or refer to a plan or schedule annexed to the petition, ante, p. 114.*]

3. An agreement dated the, &c., and made between, &c., has been entered into subject to the approval of this Honourable Court for [*state the effect of the agreement*]. The said contract is a very advantageous one, and it is for the benefit of all persons interested that the same should be carried into effect [*ante, p. 102*].

[*If no contract has been entered into, show that a sale could be advantageously effected, and that it would be beneficial to the persons interested.*]

4. No application has been made to either House of Parliament for the purpose of effecting the object of this petition or any similar object [*ante, p. 127*].

5. Your petitioner may be served with any order of this Honourable Court or any notice relating to the subject of this petition at the office of —, the solicitor of your petitioner in the matter of this petition [*ante, p. 114*].

Your petitioner, therefore, humbly prays as follows :

1. That the said lands and hereditaments may be

(k) For a collection of forms Settled Estates Act.  
under this Act, see Middleton's

sold to the said — in accordance with the terms of the said agreement of the — day of —, for the said sum of £— [or that the said hereditaments may be sold under the direction of this Honourable Court], and [add, if so desired] that the proceeds of such sale may be ordered to be paid to —, and may be applied by them to some one or more of the purposes mentioned in the above mentioned Act.

2. That all proper directions may be given for carrying out the said sale.

3. That the costs of all parties of and incident to this application may be provided for.

Or that such other order, &c. [*ante*, p. 316].

And your petitioner will ever pray, &c.

NOTE. It is intended to serve this petition on, &c. [*ante*, p. 116].

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[*Formal parts and paragraphs 1 and 2 of preceding form.*]

12.

Petition for  
general power  
to grant leases.

3. The said land and hereditaments contain valuable [*describe the minerals*], which have never been worked. It is proper and consistent with a due regard for the interests of all parties entitled under the said will, that a general power of granting leases of the said [*minerals*] should be vested in the trustees for the time being of the said will [*ante*, p. 104].

Your petitioner, therefore, humbly prays :

1. That general powers to grant leases of the said —, lying within, under, or upon the lands above mentioned may be vested in the trustees for the time being of the will of the said — deceased, in conformity with the said Act and subject to the provisions and restrictions therein contained.

[*Conclude as in preceding form.*]

[*Title same as Petition.*]

Let all parties concerned attend at my Chambers at ——— on ——— at ——— o'clock on the hearing of an application on the part of [*the petitioners*] ——— that notice of the application intended to be made by a petition presented in the above matters on the ——— day of ——— requiring A. B. and C. D. severally to notify whether he assents to or dissents from such application, or submits his rights and interests so far as they may be affected by such application to be dealt with by the Court, may be given by [*state the manner in which it is proposed to give the notice, and the time within which the notification is to be required*] or in such other manner as the judge may think fit.

13.  
Summons for directions as to service of notice pursuant to the 26th section.

Dated this ——— day of ———.

This summons was taken out by ——— of ———, solicitors for the applicant.

[*Title same as Petition.*]

Take notice that [*name petitioners and their addresses as in petition*] have presented a petition in the above matters praying that [*as in petition, but describing the lands, messuages, or tenements as in the petition*], and it is intended to apply to the said Court for an Order in accordance with such prayer, and you are [*severally*] hereby required to notify in writing within ——— after the service hereof whether you assent to or dissent from such application, or submit your rights or interests so far as they may be affected by such application to be dealt with by the Court, such notification is to be delivered to the petitioners' solicitors, or left for them at the address specified at the foot hereof, and may be so delivered by transmitting the same to them by post at such address.

14.  
Notice pursuant to sect. 26.

If no notification shall be so delivered or left within the time above limited you will be deemed to have submitted your rights and interests to be dealt with by the Court.

In the event of your dissenting from such application and

desiring to be heard in opposition to the application you are by your notification to require notice to be given to or left for you or your solicitor at a place to be specified within 3 miles from the site of Temple Bar, London, of the day on which the petition is fixed for hearing.

You or your solicitor can, upon reasonable notice to the under-named A. & B., inspect and peruse the petition without payment of any fee, and you are entitled at your own expense to have a copy of such petition furnished to you.

Dated the —— day of ——.

A. & B.

[*Address within 3 miles of the site of Temple Bar, London.*]

Petitioners' Solicitors.

To [*name the person or all persons to be served pursuant to the above section.*]

NOTE.—A copy of the above notice, with a notification at the foot thereof to be filled up by you, is sent herewith.

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### *Copy Notice.*

15.  
Form to accompany notice pursuant to sect. 26.

In pursuance of a notice, of which the above is a copy, served on me on the —— day of ——, I hereby notify that I (*l*)

Dated this —— day of ——.

To Messrs. —— [*Signature and Address.*]

(*l*) Here insert, “assent to the application,” or “dissent from the application,” or “submit my rights and interests so far as they may be affected by the application to be dealt with by the Court.”

And if you dissent and desire to be heard in opposition thereto, add

“And I desire to be heard in opposition to the application, and require notice to be given to —— at [*naming a place within three miles of the site of Temple Bar, London*] of the day fixed for the hearing of the petition.”

[*Title same as Petition.*]

Let all parties concerned attend at my Chambers at — on —, at — o'clock, on the hearing of an application on the part of [*the petitioners*] :

16.

Summons for appointment of a guardian, and for leave to make or consent to an application.

That A. B., or some other proper person may be appointed guardian of C. D., an infant, and that E. F., or some other proper person may be appointed guardian of G. H., an infant, for the purpose of making on behalf of such infants [*or consenting on behalf of such infants to*] an application proposed to be made by a petition presented on the — day of —, by the above-named applicants for an Order in accordance with the prayer of such petition, and [*in case the infants are tenants in tail*] that such guardians may be directed to make [*or consent to*] such application.

Dated this —.

This summons was taken out by — of —, solicitors for the applicants.

[*Title same as Petition.*]

Let all parties concerned attend at my Chambers at —, on —, at — o'clock, on the hearing of an application on the part of [*the petitioners*].

17.

Summons for appointment of guardian, and for leave to deliver a notification.

That A. B., or some other proper person may be appointed guardian of C. D., an infant, and that E. F., or some other proper person may be appointed guardian of G. H., an infant, for the purpose of being served with a notice requiring them on behalf of such infants, within — clear days after service thereof, to notify whether they assent to or dissent from an application proposed to be made by a petition presented on the — day of — by the above-named applicants for an Order in accordance with the prayer of such petition, or submit the infants' rights or interests so far as they may be affected by such application to be dealt with by the Court, and [*in case the infants are tenants in tail*] that such guardians may be directed to notify that they, on behalf of such infants, assent

to [*or dissent from*] such application [*or submit the infants' rights or interests, so far as they may be affected by such application to be dealt with by the Court.*]

Dated this — day of —.

This summons was taken out by — of —, solicitors for the applicants.

---

[*Title same as Petition.*]

18.

Request to  
appoint a per-  
son to examine  
a married  
woman.

The petitioners —, in a petition presented in these matters on the — day of —, request that A. B., of, &c. [*C. D., of, &c., and E. F., of, &c.*] being a solicitor [*or solicitors*], and a perpetual commissioner [*or perpetual commissioners*] (*n*), to take the acknowledgment of deeds by married women, may be appointed for the purpose of any or either of them examining the petitioners G., the wife of H. I., and K., the wife of L. M., and N., the wife of O. P., of, &c., respectively touching their knowledge of the nature and effect of the application intended to be made by the petition, and to ascertain whether they the said G. I. and K. M. respectively freely desire to make such application, and whether she the said N. P. freely desires to consent to such application.

We, the solicitors for the petitioners, hereby certify that neither of them, the said A. B., C. D., and E. F. is the solicitor for the petitioner, or for any party whose concurrence or consent to the application is required.

Dated this — day of —.

A. and B. solicitors for the petitioners.

*Address.*

The Master of the Rolls [*or the Vice-Chancellor —*]  
appoints the said — for the purposes mentioned in the  
above request.

E. F., Chief Clerk.

(*n*) Name such as may be re- women who are to be examined.  
quired to examine all the married

## [Title as in Petition.]

Let all parties concerned attend at my Chambers at ——— on ——— at ——— o'clock, on the hearing of an application on the part of ———, the petitioners in a petition presented in this matter on the ——— day of ——— that A. B., of, &c., and C. D., of, &c. [and if the married women are within the jurisdiction, add being solicitors] be appointed for the purpose of any or either of them examining the petitioners G., the wife of H. I., and K., the wife of L. M., and N., the wife of O. P., of &c., respectively touching their knowledge of the nature and effect of the application intended to be made by the said petition, and to ascertain whether they the said G. I. and K. M. freely desire to make such application, and whether she the said N. P. freely desires to consent to such application.

19.

Summons to appoint persons to examine married women.

Dated this ——— day of ———.

This summons was taken out by ———, of ———, solicitors for the applicant.

## [Title same as Petition.]

The examination of the petitioner G., the wife of H. I., and K., the wife of L. M., and of N., the wife of O. P., of (o).

20.

Form of examination of a married woman.

We, the said G. I., K. M., and N. P., having been this day respectively examined apart from our respective husbands touching our knowledge of the nature and effect of an application intended to be made to the High Court of Justice by a petition presented in this matter on the ——— day of ——— by us the said G. I., K. M., and others, for answer thereto severally say that we are aware of the nature and effect of the said intended application, and we the said G. I., and K. M. severally, freely desire to make such application; and I, the said N. P., freely desire to consent to such application. As witness our hands this ——— day of ———.

Witness to the signature of the said }  
 G. J., K. M., and N. P. }  
 Q. R. Address. }

(o) Insert the names of all who the same person and at the same time can be conveniently examined by

[*To be at the foot of the above Examination.*]

21.  
Certificate of  
examination of  
married  
women.

I, the undersigned A. B., being the person appointed by the Master of the Rolls [*or the Vice-Chancellor* —] for the purpose of examining the above-named G., the wife of H. I., K. the wife of L. M., and N., the wife of O. P., hereby certify that I have this — day of — examined the said G. I., K. M., and N. P., apart from their respective husbands touching their knowledge of the nature and effect of the application intended to be made by the petition above referred to; and I have taken such examination in writing as above set forth, and I further certify that at the same time of such examination I explained to them the nature and effect of the said application, and I am satisfied that they were aware of the nature and effect of such application, and that they the said G. I. and K. M. freely desire to make the said application, and that the said N. P. freely desires to consent to the said application.

---

[*Title as in Petition.*]

22.  
Affidavit  
verifying  
examination.

I, Q. R. of —, make oath and say that I was present and did see G. I., K. M., and N. P., respectively named in the above petition, sign the examination or paper writing annexed hereto and now produced and shown to me marked A, and that the signatures G. I., K. M., and N. P. attached thereto, are respectively the proper handwritings of G. the wife of H. I. of —, K. the wife of L. M. of —, and N. the wife of O. P. of —. And I further say that I was present and did see A. B. sign the certificate or paper writing annexed hereto and now produced and shown to me marked B, and that the signature, A. B. attached thereto is the proper handwriting of A. B. of &c. And I say that the signature Q. R. attached to the said paper writings as a witness is my handwriting.

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[*Title same as Petition.*]

Take notice that [*name petitioners and their addresses as in petition*] have presented a petition in the above matters praying that [*as in petition, but describing the lands, messuages or tenements, as in the petition*], and it is intended to apply to the said Court for an Order in accordance with such prayer. This notice is given to you in pursuance of the above Act because you are seised or possessed of an estate in trust for — whose consent or concurrence to or in the application is required by the Act. You or your solicitors can upon reasonable notice to the under-named A. and B., inspect and peruse the petition at the address specified at the foot hereof without payment of any fee, and you are entitled at your expense to have a copy of such petition furnished to you.

Dated this — day of —.

A. & B.

Address,

Solicitors for the petitioners.

To [*name the persons to be served pursuant to the above section*].

---

[*Title as in petition.*]

By direction of the Master of the Rolls [*or the Vice-Chancellor —*] notice is hereby given that an application by petition has been made to the Court of the said judge for a sale or for powers to grant leases of the above-mentioned hereditaments [*or otherwise according to the circumstances*], and the Court has directed the application to be adjourned [*or adjourned till —*], and any person whether interested in the estate or not, may on or before — apply to the said Court by motion for leave to be heard in opposition to or in support of such application. The petition may be inspected on application to Messrs. A. and B. of —, the solicitors for the petitioners.

23.

Notice pursuant to the 30th section.

24.

Notice in newspapers, sect. 31.

## 25.

Petition for  
authority to  
grant lease of  
infant's land.  
(p)

## PROPERTY LAW AMENDMENT ACT.

In the [*ante, form, 1.*]

In the matter of A. B., an infant, by C. D., his next friend,

and

In the matter of the Act 11th George the Fourth, chapter 65, intituled "An Act for consolidating and amending the law relating to property belonging to infants, femes covert, idiots, lunatics, and persons of unsound mind."

To Her Majesty's High Court of Justice.

The humble petition of the above-named A. B., by C. D. of &c., his next friend,

Showeth as follows :—

1. [*State the title of the infant, and shew that the case is within section 17. See ante, p. 173.*]

2. [*State the conditional contract for the proposed lease, and show that such lease is a proper one to be sanctioned under section 17.*]

Your petitioner therefore humbly prays as follows :—

1. That the said contract dated the — day of — may be carried into effect, and that a proper lease in accordance with such contract may be settled and approved by the Judge.
2. That your petitioner A. B. [*or the guardian*] may be at liberty to execute such lease when so settled.
3. That a counterpart of such lease may be executed by the said G. H., the lessee, and be deposited in the Central office (*q*) until your petitioner attains the age of twenty-one years, with liberty for all proper parties to have the use thereof for the purpose of enforcing any of the covenants therein contained (*r*).

Or that such other order, &c. [*ante, p. 316.*]

And your petitioner will ever pray, &c.

NOTE. It is not, &c.

(p) For other forms, see Daniell.

(q) R. S. C. Dec. 1879.

(r) As to depositing the counter-

part, see *re Letchford*, 2 Ch. D. 719.

CONFIRMATION OF SALES ACT.

In the [*ante, form, 1.*]

In the matter of the trusts of an indenture dated, &c.  
[*or as may be*]

and

In the matter of the Act 25 & 26 Victoria, chapter 108, intituled "An Act to confirm certain sales, exchanges, partitions, and enfranchisements by trustees and others."

26.  
Petition for authority to dispose of surface or minerals separately.

To Her Majesty's High Court of Justice.

The humble petition of [*ante, p. 140.*]

Showeth as follows :—

1. [*State the instrument under which the petitioners are authorised to dispose of the land, and show that it does not forbid the disposal of the mines and surface separately. Ante, p. 140.*]

2. [*Show that it will be beneficial to the persons interested to dispose of the surface and minerals separately.*]

Your petitioners therefore humbly pray that your petitioners — and — or the survivor of them, or the trustee or trustees for the time being of the said indenture of the, &c. [*or as may be*], may be at liberty to dispose of the said land, with an exception or reservation of the mines and minerals in and under the same, and with or without rights and powers incidental to the working, getting, or carrying away of such minerals; and may be at liberty to dispose of such minerals, with or without such rights or powers as aforesaid, separately from the residue of the said land; and in either case without prejudice to any future exercise of the authority with respect to the excepted minerals or the undisposed of land.

Or that such other order, &c. [*ante, p. 316.*]

And your petitioner will ever pray, &c.

NOTE. It is intended to serve this, &c.

[*ante, p. 141.*]

## LAND TAX REDEMPTION ACTS.

27.

Petition for  
leave to cut  
timber. (s)

In the [*ante, form, 1.*]

In the matter of the estates settled by the will of  
— deceased,

and

In the matter of the Act 42nd George the Third, chapter 116, intituled “An Act for consolidating the provisions of the several Acts passed for the redemption and sale of the land tax into one Act, and for making further provision for the redemption and sale thereof, and for removing doubts respecting the right of persons claiming to vote at elections for knights of the shire and other members to serve in Parliament in respect of messuages, lands, or tenements, the land tax upon which shall have been redeemed or purchased.”

To Her Majesty’s High Court of Justice.

The humble petition of [*ante, p. 143*].

Showeth as follows :—

1. [*Show that the petitioner is beneficially entitled to the rents and profits, and that he is restricted from cutting timber ; ante, p. 143.*]
2. [*State the amount of the land-tax.*]
3. [*Show that the timber is in a fit state to be cut, and that it is expedient to cut down sufficient to redeem the land-tax.*]

Your petitioner therefore humbly prays :—

1. That he may be at liberty to cut down and sell such quantity of timber upon the said settled estate as shall be sufficient to redeem the land-tax charged upon such estate.
2. That out of the proceeds of such sale the costs and expenses of surveying, valuing, and felling such timber, and of the sale thereof, and the costs of this application may be paid and satisfied.
3. That thereout also the land-tax charged on the said estate may be redeemed.

(s) For other forms, see Daniell.

4. And that the residue of such proceeds of sale may be applied in such manner as your lordship may please to direct.

Or that such other order, &c. [*ante*, p. 316].

And your petitioner will ever pray, &c.

NOTE. It is, &c.

## FINES AND RECOVERIES ABOLITION ACT.

In the [*ante*, form, 1].

In the matter of A. B., an infant,  
and

In the matter of the Act 3rd and 4th William the Fourth, chapter 74, intituled "An Act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance."

To Her Majesty's High Court of Justice.

The humble petition of C. D., of, [*ante*, p. 146].

Showeth as follows:—

1. [*State the settlement, and show how the person under disability became protector.*]
2. [*State the disability of the protector.*]
3. [*Show how the petitioner has become tenant in tail.*]
4. Your petitioner is desirous of barring his estate tail in the said settled estate and of vesting the fee simple thereof in himself.

Your petitioner therefore humbly prays that your Lordship, as protector of the said settlement, will be pleased to consent to a disposition under the above-mentioned Act for the purpose of barring the estate tail of your petitioner in the hereditaments comprised in the said indenture of the — day of —, and that a proper deed for the purpose of barring such estate tail may be directed to be settled.

Or that such other order, &c. [*ante*, p. 316].

And your petitioner will ever pray, &c.

NOTE. It is, &c.

(t) For other forms, see Daniell and Barry's Stat. Jur.

28.

Petition for  
leave to bar  
estate tail  
when protector  
is an infant. (t)

## 29.

Petition for  
sale of lands  
delivered in  
execution under  
an *elegit*.

## JUDGMENT DEBTORS ACT.

In the [*ante, form, 1*].

In the matter of an Act passed in the Session held in the 27th and 28th years of the reign of Her present Majesty intituled "An Act to amend the law relating to future judgments, statutes, and recognizances."

and

In the matter of A. B., of —.

To Her Majesty's High Court of Justice.

The humble petition of C. D., of —.

Showeth as follows :—

1. By a judgment, &c.

2. On the — day of — your petitioner caused a writ of *eligit* to be sued out of this honourable Court directed to the sheriff of —, commanding him that, without delay, he should cause to be delivered to your petitioner, &c.

3. In pursuance of the said writ the said sheriff duly caused an inquisition to be held on the — day of —, at —, and by such inquisition it was found that the said A. B. was seized, &c.

4. On the — day of — the said sheriff caused the said lands and hereditaments to be delivered in execution to your petitioner.

5. The said sheriff has duly returned the said writ ; and the said writ and the return have been duly filed.

6. The said writ of *elegit* has been duly registered in manner prescribed by the above-mentioned Act ; and the registry of such writ continues and is still in force.

7. No part of the said sum of £— has been paid or satisfied ; and the said sum, together with interest thereon from the — day of —, still remains due and owing to your petitioner by virtue of the said judgment.

Your petitioner therefore humbly prays :—

That the interest of the said A. B. in the said lands and hereditaments so delivered in execution to your petitioner as aforesaid may be sold ; and that the money arising from such sale may be applied in payment to your petitioner of what

is due to him under the said judgment of the — day of — ; or, if there are any other charges on the interest of the said A. B. in the said lands and hereditaments, that the proceeds of the said sale may be applied in payment of what is due to your petitioner and to the parties entitled to such charges according to their respective priorities.

That for effectuating the purposes aforesaid all proper accounts and inquiries may be taken and made.

That the costs, &c. [*ante*, p. 150].

Or that such other order, &c. [*ante*, p. 316].

And your petitioner will ever pray, &c.

NOTE. It is intended to serve this petition on A. B. in the petition named [*ante*, p. 148].

#### WINDING-UP PETITIONS.

In, &c. [*ante*, form, 1.]

In the matter of the — Company, Limited,  
and

In the matter of the Companies Acts, 1862 and 1867.

To Her Majesty's High Court of Justice.

The humble petition of, &c. [*ante*, p. 166].

Showeth as follows :—

1. The above-named company (hereinafter called the company) was registered with articles of association, on the — day of — under the above-mentioned Acts.

2. The registered office of the company is at —.

3. The objects for which the company was established are as follows :—To, &c. [*state the objects or principal objects*], and

(u) For other forms of winding-up Petitions, see Palmer's Company Precedents, p. 610 *et seq.*

30.  
Petition for  
winding up  
order. (u)

for other objects set forth in the memorandum of association of the company.

4. The nominal capital of the company is £—— divided into —— shares of £—— each. The whole of the said shares have been issued.

5. [*State the grounds upon which the application is made, see ante, p. 153*].

6. Under the circumstances aforesaid, it is just and equitable that the company should be wound up.

Your petitioner therefore humbly prays,

That the said —— Company, Limited, may be wound up by this honourable Court under the provisions of the Companies Acts 1862 and 1867; and that for that purpose all necessary and proper directions may be given.

Or that such other order, &c., [*ante, p. 316*].

And your petitioner will ever pray, &c.

NOTE. It is intended to serve this petition on the said —— Company, Limited [*ante, p. 172*].

31. In the High Court of Justice,  
Affidavit verifying petition. Chancery Division.  
(x)

In the matter, &c.

I —— of —— make oath and say that such of the statements in the petition now produced, and shown to me and marked with the letter A. as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons, I believe to be true.

Sworn, &c.

(x) *Ante*, pp. 175, 176; and see *re Cakemore, &c.. Co.*, W. N. (1880) 15.



In the matter [*Title as in petition, ante*].

32.

Notice is hereby given, that a petition for the winding up of the above-named company by the Chancery Division of Her Majesty's High Court of Justice [*or subject to the supervision of, &c.*] was on the — day of — presented to Her Majesty's High Court of Justice by the said company [*or by — a creditor (or contributory) of the said company [or as the case may be]*]. And that the said petition is directed to be heard before the Vice-Chancellor Sir — [*or Master of the Rolls*] on the — day of — ; and any creditor or contributory of the said company desirous to oppose the making of an order for the winding up of the said company under the above Act should appear at the time of hearing, by himself or his counsel, for that purpose ; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same, by the undersigned, on payment of the regulated charge for the same (z).

Advertisement  
of winding up  
petition. (y)

C. & D. of &c. [*agents for E. & F. of &c.*]

Solicitors for the petitioner.

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REDUCTION OF CAPITAL.

In the [*ante*, p. 315].

33.

Petition for  
confirmation  
by the Court.

In the matter of the Companies Acts, 1867 and 1877  
[*ante*, p. 190],

and

In the matter of the — Company Limited and  
Reduced.

To Her Majesty's High Court of Justice.

The humble petition of the — Company Limited  
and Reduced,

Showeth as follows :—

1. Your petitioner, the above-named company [hereinafter called the company], was registered, &c. [*continue as in form 30, par. 1*].

(y) *Ante*, p. 168

(z) The charge is fourpence per folio, *ante*, p. 176.

2, 3, and 4 [*repeat pars. 2, 3, and 4, of form 30*].

5. Shortly after the incorporation of the company it commenced and has since successfully carried on business.

6. The company has issued — of its shares and no more, and the sum of £—— per share has been paid up thereon.

7. By clause 3 of the articles of association of the company it is provided that the company may from time to time by special resolution reduce its capital.

8. By a special resolution of the company duly passed and confirmed, in accordance with section 51 of the Companies Act, 1862, at extraordinary general meetings of the company, held respectively on the — day of — and the — day of — it was resolved as follows, namely, that [*state resolution for reduction*].

Your petitioner therefore humbly prays :—

That the said special resolution, passed and confirmed as aforesaid, may be confirmed, and that for this purpose all necessary and proper inquiries and directions may be made and given, and that a day may be fixed from and after which the company shall be at liberty to discontinue the addition to its name of the words “and reduced.”

Or that such other order, &c. [*ante*, p. 316.]

And your petitioner will ever pray, &c.

NOTE. It is not intended to serve this petition on any person.

In the matter, &c. [*Title as in petition*].

34.  
Advertisement  
of presentation  
of petition.

Notice is hereby given that a petition for confirming a resolution reducing the capital of the above company from £—— to £—— was on the — day of — presented to Her Majesty's High Court of Justice, and is now pending, and that the list of creditors of the company is to be made out for the — day of —.

C. & D., of — [agents for A. & B., of, &c.].  
Solicitors to the Company.

## JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870.

In the [*ante*, p. 315].

In the matter of the — Company Limited,  
and

In the matter of the Companies Acts 1862 and 1867,  
and

In the matter of the Joint Stock Companies Arrangement Act, 1870.

To Her Majesty's High Court of Justice.

The humble petition of [*ante*, p. 198].

Showeth as follows :

[*For a detailed form of this petition, see Palmer's Company Precedents, p. 579 ; and compare form under Railway Companies Act, infra.*]

35.  
Petition for  
sanction of  
Court.

## RAILWAY COMPANIES ACT, 1867.

In the [*ante*, p. 315].

In the matter of the — Railway Company,  
and

In the matter of the Railway Companies Act, 1867.

To Her Majesty's High Court of Justice.

The humble petition of — Directors of the above-named Company [*ante*, p. 202].

Showeth :—

That on the — day of — the directors of the above-named Company filed in this honourable Court a scheme of arrangement between the above-named company and their creditors [*ante*, p. 202].

Your petitioners therefore humbly pray that the scheme so filed as aforesaid may be confirmed by the order of this honourable Court.

And your petitioners will ever pray, &c.

36.  
Petition to  
confirm scheme  
of arrange-  
ment.

## AMALGAMATION OF LIFE ASSURANCE COMPANIES.

37.  
Petition for  
sanction of  
Court.

In the [*ante*, p. 314].

In the matter of the Companies Acts, 1862 and 1867.

In the matter of the Life Assurance Companies Act,  
1870.

and

In the matter of the — Life Assurance Company.

To Her Majesty's High Court of Justice.

The humble petition of [*ante*, p. 207],

Showeth as follows :—

[*For a complete form of this petition, see Palmer's Company  
Precedents, p. 566.*]

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## TAXATION OF COSTS.

38.  
Petition of  
course for  
taxation of  
costs.

In the [*ante*, p. 315].

In the matter of A. B., one of the solicitors of this  
Court [*ante*, p. 214].

To Her Majesty's High Court of Justice.

The humble petition of C. D. of —.

Showeth as follows :—

1. Your petitioner employed the above-named A. B., of —, as his solicitor in a certain action in this Court, in which your petitioner was plaintiff, and E. F. was defendant, and in other matters [*Or, in certain conveyancing business, &c.*].

2. The said A. B., on the — day of —, delivered to your petitioner his bill of fees, charges, and disbursements, which your petitioner is advised contains improper charges.

3. Your petitioner submits to pay to the said A. B. what shall appear to be due to him upon the taxation of his said bill.

Your petitioner therefore humbly prays that it may be referred to the Taxing Master to tax and settle the said bill, with all usual directions; and that no proceedings may be commenced against your petitioner in respect of the said bill pending such reference.

And your petitioner will ever pray, &c.

## CHARGE FOR COSTS.

In the [*ante*, p. 315].

Between A. B. . . . . Plaintiff.  
and

C. D. . . . . Defendant.

And in the matter of the Solicitors Act, 1860 [*ante*,  
p. 210].

39.  
Petition for  
declaration  
of charge.

To Her Majesty's High Court of Justice.

The humble petition of —, of —, gentleman, a  
solicitor of the Supreme Court,

Showeth as follows :—

1. [*State the retainer of the petitioner.*]
2. [*State the conduct by the petitioner of the prosecution or  
defence of the action.*]
3. [*Show that the result of the action was that property was  
recovered or preserved for the client through the instrumentality  
of the petitioner.*]

Your petitioner therefore humbly prays :—

1. That it may be declared that your petitioner, as  
the solicitor employed as aforesaid, is entitled to  
a charge upon the share and interest of the said  
plaintiff [*or defendant*] of and in the said heredi-  
taments and premises at — and of and in any  
other property recovered by or preserved for him  
in the said action for the taxed costs, charges,  
and expenses of your petitioner of or in reference  
to the said action as the solicitor of the said  
plaintiff [*or defendant*].
2. That it may be referred to the Taxing Master  
to tax such costs as between solicitor and client,  
including therein the costs, charges, and expenses  
of the petitioner of and in reference to this action,  
and also including the costs of the said petitioner  
of and relating to this application.
3. That the amount of such taxed costs, charges,  
and expenses may be raised by a sale of the  
share and interest of the said plaintiff [*or defend-  
ant*] in the said hereditaments and premises and

other such property as aforesaid, and may be paid to your petitioner.

Or that such other order, &c. [*ante*, p. 316.]

And your petitioner will ever pray, &c.

NOTE. It is intended to serve this petition on [*ante*, p. 210].

#### CHANGE OF SOLICITOR.

40.  
Petition of  
course to  
changesolicitor  
and London  
agent.

In the [*ante*, p. 315].

[*Title of Cause or Matter.*]

To Her Majesty's High Court of Justice.

The humble petition of, &c.

Showeth as follows :—

Your petitioner lately employed Mr. E. F. of &c. as his solicitor in this cause [*or matter*], who acted by Mr. L. M. of &c. as his agent.

Your petitioner is now desirous to employ Mr. C. D., whose address for service is at —, as his solicitor, and that Mr. G. H., whose address for service is at —, may be his agent.

Your petitioner therefore humbly prays :—

That he may be at liberty to change his solicitor in this cause [*or matter*] by appointing the said Mr. C. D. as such solicitor, in the place and stead of the said Mr. E. F., and that the said Mr. G. H. may be the agent of your petitioner therein, in the place and stead of the said Mr. L. M.

And your petitioner will ever pray, &c.

#### CUSTODY OF INFANTS ACT.

41.  
Petition for  
custody and  
access.

In the [*ante*, p. 315].

In the matter of A.B. an infant,  
and

In the matter of the Act 36 & 37 Victoria, chapter 12, intituled "An Act to amend the law as to the custody of infants."

To Her Majesty's High Court of Justice.

The humble petition of C. D. the wife of E. F. of  
—, by G. H. of —, her next friend.

Showeth as follows :

1. [*State the marriage of the infant's parents, and the children of such marriage.*]

2. [*State in whose custody the infant is, and the grounds upon which the application is made.*]

Your petitioner therefore humbly prays :—

That the said E. F. may be ordered to deliver the said infant, A. B., into the hands of your petitioner, until such age and subject to such regulations as your Lordship shall deem convenient and just.

Or, that your petitioner may have access to the said infant, A. B., at such times and subject to such regulations as your Lordship shall deem convenient and just.

That the said E. F. may be ordered to pay the costs of and incident to this application.

Or that such other order, &c. [*ante*, p. 316.]

And your petitioner will ever pray, &c.

NOTE. It is intended to serve this petition  
on E. F. in the petition named.

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#### INFANTS SETTLEMENTS ACT.

In the [*ante*, p. 315].

In the matter of A. B. an infant, by C. D. her next  
friend [*or guardian*]

and

In the matter of the Act of Parliament 18 & 19  
Victoria, chapter 43, intituled "An Act to enable  
infants, with the approbation of the Court of Chan-  
cery, to make binding settlements of their real and  
personal estate on marriage."

#### 42.

Petition for  
sanction of  
Court to a  
settlement.

To Her Majesty's High Court of Justice.

The humble petition of the above-named A. B., an infant, by the said C. D. of —, her next friend [*or guardian*] (*b*).

Showeth as follows :

1. [*State the infant's age*].
2. [*State whether the infant has any parent or guardian, and under whose care she is living*].
3. [*State the infant's fortune, and show how it is invested*].
4. E. F. of — has made proposals of marriage to your petitioner, which your petitioner has, with the consent of her said mother, accepted.
5. [*State shortly the age, rank, position in life, and fortune of the proposed husband*].
6. Your petitioner, in contemplation of the said marriage, is desirous, with the sanction of this honourable Court, of making a valid and binding settlement of her property.

Your petitioner therefore humbly prays that a proper settlement of your petitioner's property may be sanctioned by this honourable Court, and that your petitioner may be at liberty, in contemplation of her said marriage, to execute such settlement.

Or that such other order, &c., [*ante*, p. 316].

And your petitioner will ever pray, &c.

NOTE. It is intended to serve this petition, &c.

#### PETITION FOR LEAVE TO MARRY.

43.  
Petition by  
ward of Court  
for leave to  
marry.

In the [*ante*, p. 315].

[*Title of action or matter in which the infant is a ward of Court*].

and

In the matter of the Act [*as in the preceding form*].

To Her Majesty's High Court of Justice.

The humble petition of the above-named infant A. B., by C. D. of —, her testamentary guardian, and of E. F. of — [*ante*, p. 230].

(*b*) See *ante*, p. 227.



Showeth as follows :

1. [*Show how the infant became a ward of Court—State the infant's age, and the appointment of guardians, if any*].

2. [*State infant's fortune, and show how it is invested*.]

3. Your petitioner, E. F., has made proposals of marriage to your petitioner A. B., which proposals your petitioner A. B. has, with the consent of her guardian, accepted, subject to approbation of this honourable Court.

4. [*State age, rank, position in life, and fortune of the proposed husband*.]

Your petitioner therefore humbly prays that an inquiry may be made whether the proposed marriage is a fit and proper marriage for your petitioner, A. B.; and if so, that your petitioners may be at liberty to lay proposals for a settlement on such marriage before the Judge in Chambers; and that a proper settlement of the property of your petitioner A. B. may be approved, and be executed by all necessary parties; and that, upon the due execution thereof, your petitioners may be at liberty to intermarry.

Or that such other order, &c. [*ante*, p. 316].

And your petitioner will ever pray, &c.

NOTE. It is intended to serve this petition on, &c.

# MARRIAGE ACT.

In the [*ante*, p. 315.]

In the matter of A. B., an infant, by C. D., her next friend,

and

In the matter of the Act of Parliament 4th George the Fourth, chapter 76, intituled "An Act for amending the laws respecting the solemnisation of marriages in England."

To Her Majesty's High Court of Justice.

The humble petition of the above-named infant A. B., by C. D. of —, her next friend,

(c) *Ante*, p. 235.

44.

Petition for sanction of Court. (c)

Showeth as follows :—

1. [*State infant's age—the proposed marriage—the disability of the person whose consent is required—the infant's fortune—the proposed settlement*].

6. The said proposed marriage is a fit and proper marriage for your petitioner ; but in consequence of the mental incapacity of your petitioner's father [*or as the case may be*], the consent of this honourable Court is necessary to the said marriage.

Your petitioner therefore humbly prays that it may be declared that the said proposed marriage is a fit and proper marriage for your petitioner within the meaning of the said Act ; and that your petitioner and the said E. F. may be at liberty to contract the same accordingly.

Or that such other order, &c. [*ante*, p. 316].

And your petitioner will ever pray, &c.

NOTE. It is, &c.

#### SIR SAMUEL ROMILLY'S ACT.

45.  
Petition.

In the [*ante*, p. 315].

In the matter of the ——— Charity,  
and

In the matter of the Act 52nd Geo. III., chapter 101, intituled "An Act to provide a summary remedy in cases of abuses of trusts created for charitable purposes."

To Her Majesty's High Court of Justice.

The humble petition of [*ante*, p. 238].

Showeth as follows :—

[*For statements and prayer, see Daniell's Forms, p. 1153, Barry's Stat. Jur., p. 316 ; and as to service, see ante, p. 239.*]

## TRUSTEE ACTS.

In the [*ante*, p. 315].

In the matter of the trusts of the will of — deceased [*or of an indenture dated, &c. and made between, &c.*]

46.  
Petition for  
appointment of  
new trustees  
and vesting  
order.

and

In the matter of the Trustee Act, 1850, and [*where applicable*] of the Act 15th & 16th Vict. c. 55, intituled "An Act to extend the provisions of the Trustee Act, 1850."

To Her Majesty's High Court of Justice.

The humble petition of, &c. [*ante*, p. 258]

Showeth as follows :—

[*Set out the instrument creating the trust, and show who are the persons interested.*]

[*Show what the trust property consists of, and state how it has been invested or otherwise dealt with.*]

[*Show why it is inexpedient, difficult, or impracticable to appoint new trustees without the assistance of the Court.*]

4. E. F. of — and G. H. of — are fit and proper persons to be appointed such new trustees, and they have respectively agreed and consented to be so appointed and to act as such trustees.

Your petitioners therefore humbly pray as follows :—

1. That the said E. F. and G. H. may be appointed new trustees of the will of the said — deceased [*or of the said indenture dated, &c.*] in substitution for the said — and —.
2. That the lands subject to the trusts of the said will and the property comprised in the said mortgage may vest in the said E. F. and G. H. as the trustees of the said will [*or settlement*] for the estate devised [*or conveyed to the said — and —*] by the said will to the trustees thereof.
3. That the right to call for a transfer and to transfer into their own names the said £ — consolidated £3 per cent. annuities now standing in the names of, &c., and to receive any dividends accrued or

hereafter to accrue due thereon, may vest in the said E. F. and G. H., as such trustees as aforesaid [*ante*, p. 250].

4. That the right to sue for or recover the said mortgage debt of £—— [*or any chose in action subject to the trusts of the said will*] or any interest in respect thereof may vest in the said E. F. and G. H. as such trustees as aforesaid.
5. That it may be referred to the Taxing Master to tax as between solicitor and client the costs of your petitioners and of all other proper parties to this application and consequent thereon, and that such costs when taxed may be paid out of the said trust funds [*ante*, p. 262].

Or that such other order, &c. [*ante*, p. 316].

And your petitioner will ever pray, &c.

NOTE. It is intended to serve this petition on, &c. [*ante*, p. 259].

47.

Affidavit of  
fitness of pro-  
posed trustees.  
(d)

In the High Court of Justice.  
Chancery Division.

[*Title as in Petition.*]

We, —— of ——, and —— of ——, make oath and say as follows :—

1. We know, and are well acquainted with A. B. of ——.
2. The said A. B. is in our judgment, and to the best of our belief, a fit and proper person to be appointed a trustee of the will of the above-named ——. [*State grounds for belief.*]

Sworn, &c.

48.

Consent to  
act. (d)

In the High Court of Justice.  
Chancery Division.

[*Title as in Petition.*]

We, the undersigned A. B. of ——, and C. D. of ——, hereby testify our consent to accept the office of trustee, and to

(d) *Ante*, 261.

act in the trusts of the will of —, late of —, deceased,  
in case the court shall think fit to appoint us to that office.

Dated this — day of —, 188—.

A. B.,

C. D.

Signed by the said A. B. and C. D. }  
in the presence of }  
E. F. of —.

[*Formal parts as in No. 47.*]

1. The signatures "A. B." and "C. D." respectively, set <sup>49.</sup> and subscribed to the paper writing marked A. hereunto an- <sup>Affidavit</sup> nexed purporting to be the consent, dated the — day of <sup>verifying</sup> —, of — and — are respectively the handwriting of <sup>signatures.</sup> the said — and — in the paper writing mentioned, as I know from having seen them respectively sign the said paper writing.

LORD ST. LEONARDS' ACT, 1859.

In the [*ante*, p. 315].

In the matter of the trusts of, &c. [*ante*, p. 267]  
and

In the matter of the Act 22 & 23 Vict. c. 35, in-  
tituled "An Act to further amend the law of pro-  
perty, and to relieve trustees."

<sup>50.</sup>  
Petition for  
opinion, ad-  
vice and di-  
rection of the  
Court. (e)

To Her Majesty's High Court of Justice.

The humble petition of A. B. of —, and C. D. of  
—, [*ante*, p. 267]

Showeth as follows :—

1. &c. [*State the facts shortly*].

The opinion, advice, or direction of this honourable  
court is desired upon the following questions :—

1. Whether, &c.

(e) For a complete form, see Barry's Stat. Jur.

2. Whether, &c.

3. In what manner the costs of this application are to be paid or provided for [*ante*, p. 268].

NOTE. It is, &c. [*ante*, p. 267].

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#### PETITION FOR INQUIRY.

51.  
Petition.

In Lunacy.

In the matter of A. B., a supposed lunatic.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of C. D. of, &c. [*ante*, p. 269]

Showeth as follows :—

That the said A. B., now residing at —, now is, and for some time past, has been of unsound mind, and altogether unfit and unable to govern himself, or to manage his affairs, as by the affidavits hereto annexed appears.

That your petitioner C. D. is the [*state relationship*] and sole next of kin of the said A. B.

Your petitioner therefore humbly prays your lordship that the Masters in Lunacy, or one of them, may be directed to inquire and certify concerning the lunacy of the said A. B.

And your petitioner will ever pray, &c.

C. D.

Witness. — of —.

Solicitor to the petitioner.

NOTE. It is, &c. [*ante*, p. 270].

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52.  
Notice to be  
indorsed on  
petition for  
inquiry.

Mr. A. B.,

Take notice, that a petition, of which a copy is within written, was on the — day of —, presented to the Lord Chancellor by me [*or by C. D. of* —(f)], and that by virtue of and under

(f) When a demand for a jury has been filed before petition, from this to the end is to be omitted.

the same an inquiry may be ordered to take place before one of the Masters in Lunacy, as to whether you are or are not of unsound mind, and incapable of managing yourself and your affairs ; but that you may, in case you think fit, demand that such an inquiry may, if ordered, be had before a jury, in which case a notice of such your desire must be signed by you, and attested by your solicitor, and filed with the Registrar in Lunacy at his office in Southampton Buildings, Chancery Lane, London, within seven days after your receipt of this present notice.

Dated this — day of —.

(Signed) C. D.

(Or X. Y. solicitor for the petitioner, C. D.)

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#### LEAVE TO ATTEND INQUIRY.

In Lunacy.

In the matter of A. B., a supposed lunatic.

53.  
Petition for  
leave to at-  
tend.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of [*ante*, p. 274],

Showeth as follows :—

1. That by an order made in the above matter on the — day of —, it was ordered that the Masters in Lunacy should inquire as to the lunacy of the said A. B.

2. That the said inquiry is to be opened at —, on the — day of —, and it is material that your petitioner should be at liberty to attend the said inquiry by his counsel and solicitor.

Your petitioner therefore humbly prays your lordship that he may be at liberty to attend the execution of the said inquiry by his counsel and solicitor, and that due notice of any adjournments thereof may be duly given to your petitioner.

And your petitioner will ever pray, &c.

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54.

Petition for  
leave to tra-  
verse inquisi-  
tion.

## LEAVE TO TRAVERSE.

In Lunacy.

In the matter of A. B., a lunatic.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of the said A. B. [*ante*, p. 275],

Showeth as follows :—

1. That by an order for inquiry made in this matter on the, &c., it was ordered that the Masters in Lunacy should inquire concerning the lunacy of your petitioner.

2. That by the inquisition taken on the execution of the said order on, &c., it was found that your petitioner was a person of unsound mind.

3. That your petitioner has been informed and believes that [*State grounds of traverse*].

4. That your petitioner is advised that the said finding was contrary to the evidence adduced on the part of your petitioner.

5. That your petitioner is of sound mind and competent to govern himself and his affairs, and is prejudiced and aggrieved by the issuing of the said fiat [*or commission*], and the return of the said inquisition.

6. That proceedings to appoint committees of the person and estate of your petitioner, and to inquire as to the heir-at-law and next-of-kin of your petitioner and as to other matters, are now pending before the Master in Lunacy.

Your petitioner therefore humbly prays :

That he may be at liberty to traverse the said inquisition, and that in the meantime all further proceedings before the Master may be stayed.

Or that such other order, &c. [*ante*, p. 316].

And your petitioner will ever pray, &c.

A. B.

Witness. — of —,  
Solicitor.

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## CONFIRMATION OF REPORT.

In Lunacy.

55.  
Petition.

In the matter of A. B., a lunatic.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of —

Showeth as follows :

That by an inquisition taken at, &amp;c., on, &amp;c., under an order for that purpose the said A. B. was found, &amp;c.

That your petitioner, in pursuance of the General Orders in Lunacy, laid before —, Esq., the Master in Lunacy, a state of facts and proposal relative to the several matters referred to him, and the said Master by his Report made in this matter, dated, &amp;c., after stating, &amp;c., certified, &amp;c.

Your petitioner therefore humbly prays your Lordship that the said Master's Report may be confirmed, and that, &c. [*state the effect of report*].That it may be referred, &c. [*prayer for costs*].Or that such other order may be, &c. [*ante*, p. 316].

And your petitioner will ever pray, &amp;c.

NOTE. It is, &c. [*ante*, p. 279].

## SUPERSEDEAS.

In Lunacy.

56.  
Petition for  
supersedeas.

In the matter of A. B., late a person of unsound mind.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of the above-named A. B., now residing with — of — [*ante*, p. 282].

Showeth as follows :

1. [*State order for inquiry, result of inquiry and subsequent proceedings in lunacy.*]

4. The state of your petitioner's health has so far improved as to render any restraint upon his actions unnecessary, and your petitioner has for some time past enjoyed his personal liberty. Your petitioner having now perfectly recovered his sound state of mind and understanding, is desirous that the said proceedings in lunacy shall be superseded.

Your petitioner therefore humbly prays that he may be at liberty to attend your Lordship for the purpose of being examined as to his sanity of mind and competency of understanding for the management of himself and his estate, and that the said Inquisition and proceedings thereon may be superseded forthwith, and that a supersedeas may issue for that purpose.

Or that such other order, &c. [*ante*, p. 316].

And your petitioner will ever pray, &c.

A. B.

Witness. — of —.  
Solicitor.

NOTE. It is, &c. [*ante*, p. 282].

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#### PETITION ON DEATH OF LUNATIC.

57.  
Petition for  
payment out.

In Lunacy.

In the matter of A. B., late a person of unsound mind, deceased [*ante*, p. 285].

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of C. D., the committee of the person and estate of the said A. B., and of E. F. and G. H., the executors of the said A. B.

Showeth as follows :—

1. That by an Inquisition taken at, &c., the said A. B., was found, &c.
2. That the custody of the person, and the care and management of the estate of the said A. B., were duly granted to your petitioner, C. D.

3. That the said A. B. died on the — day of —, having previously to his insanity duly executed his will dated the — day of —, whereby he appointed, &c.

4. The said will was duly proved on the, &c., by, &c.

5. There is now in Court to the credit of this matter the sum of £—— Bank £3 per cent. Annuities, and the sum of £—— cash, and your petitioners are desirous that the same may be transferred and paid to your petitioners, E. F. and G. H., as such executors as aforesaid.

Your petitioners therefore humbly pray :—

1. That the costs of your petitioners of and relating to this matter may be taxed as between solicitor and client, and that the amount of such costs, when taxed, may be paid out of the said sum of £—— cash to the credit of this matter.

2. That the said sum of £—— Bank Annuities standing to the credit of this matter, and any dividends which may accrue thereon previously to the transfer, and also the residue of the said sum of £—— cash, after payment of the said costs, may be transferred and paid to your petitioners, E. F. and G. H., as such executors as aforesaid.

Or that such other order, &c. [*ante*, p. 316].

And your petitioners will ever pray, &c.

NOTE. It is, &c. (*ante*, p. 286).

#### LUNACY REGULATION ACT, 1862.

In Lunacy.

In the matter of A. B., a supposed insane person.

And in the matter of The Lunacy Regulation Act, 1862.

58.  
Petition for  
maintenance.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of C. D., of, &c., and E. F., of, &c.

Showeth as follows :—

1. That A. B., now residing at —, is now and has for —

years past been of unsound mind, and incapable of managing his affairs, as by the affidavits hereto annexed appears.

2. That the property of the said A. B. consists of the following particulars, that is to say, the sum of £300 £3 per cent. Consolidated Bank Annuities standing in the name of the said A. B., and of three cottages with gardens and premises at —, in the county of —, producing together a net income of £30.

3. That the said A. B. is a bachelor, and has no father or mother living, and your petitioner C. D. is the eldest brother and heir-at-law, and your petitioner E. F. is a sister of the said A. B., and that the names and descriptions of the other persons who would be entitled to the estate of the said A. B. under the Statutes for the distribution of the effects of intestates in case he were dead, intestate, are set forth in the affidavits hereto annexed.

4. That there is owing to — for the past maintenance of the said A. B. the sum of £—

Your petitioners, therefore, humbly pray :

1. That your petitioners' costs, charges, and expenses of this application and consequent thereon, may be taxed.
2. That the said sum of £300 £3 per cent. Consolidated Bank Annuities may be ordered to be paid and transferred into Court to the credit of an account entitled, "In trust in the matter of A. B., an insane person, and the Lunacy Regulation Act, 1862."
3. That a sufficient part of the said bank annuities when so transferred may be ordered to be sold to raise the amount of such costs when taxed, and also the said sum of £—; and that out of the proceeds of such sale the amount of such costs when taxed, and the said sum of £— may be ordered to be paid.
4. That the dividends of the residue of the said bank annuities may be paid to your petitioners during the life of the said A. B., or until further order.
5. That your petitioners may be authorised to receive the rents of the said cottages during the life of the said A. B.

6. That the said dividends and rents may be applied by your petitioners in the maintenance of the said A. B.

Or that such other order, &c., [*ante*, p. 316].

And your petitioners will ever pray, &c.

C. D.

E. F.

Witness. — of —

Solicitor.

NOTE. It is, &c. [*ante*, p. 288].

Mr. A. B.,

Take notice, that a petition, of which a copy is within written, was on the — day of — presented to the Lord Chancellor, and that in pursuance thereof orders may be made on the grounds of your being of unsound mind and incapable of managing your affairs, for the purpose of rendering your property or the income thereof available for the maintenance or benefit of yourself [*and your family, or for carrying on your trade or business*]; and that if you intend to object to such orders being made, notice of such objection must be signed by you, and attested by your solicitor, and filed at the office of the Registrar in Lunacy at his office at Southampton Buildings, Chancery Lane, London, within seven days of your receipt of the present notice.

59.  
Notice to be  
endorsed on  
copy petition.

Dated this — day of — 188—.

(Signed) C. D.

[Or E. F., *solicitor for the petitioner*, C. D.]

In the matter of A. B., an alleged insane person.

60.  
Notice of  
objection by  
alleged lunatic.

I, the above-named A. B., having been served with the notice of the presentation of a petition, praying for an order respecting my property, on the grounds that I am of unsound mind, and

incapable of managing my affairs, do hereby give notice of my intention to object to such order being made.

Dated this — day of —

A. B.

Witness. C. D.

Solicitor for the above-  
named A. B.

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# PETITION OF RIGHT.

61.  
Petition.

In the [*ante*, p. 315].

[*Set out the title of the intended action.*]

To the Queen's Most Excellent Majesty.

The humble petition of A. B. of — by his attorney,  
C. D. of — [*State the Christian and surnames and  
usual places of abode of the suppliant and of his attorney  
if any, by whom the petition is presented.*]

Showeth as follows :

[*Set forth with convenient certainty the facts entitling the  
suppliant to relief, ante, p. 291.*]

Your suppliant, therefore, humbly prays, &c.

Dated the — day of —, 188—.

A. B.

[*Or — counsel for A. B.  
or — solicitor for A. B.*]

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62.  
Indorsement  
on copy peti-  
tion to be  
served on  
Treasury  
Solicitor (*g*).

The suppliant prays for a statement of defence on behalf of  
Her Majesty within twenty-eight days after the date hereof,  
or otherwise that the petition may be taken as confessed.

Dated the — day of —.

---

63.  
Indorsement  
for service

You are hereby required to appear to the within petition in  
Her Majesty's High Court of Justice, Chancery Division,

(*g*) *Ante*, p. 291.

within eight days, and to deliver a statement of defence thereto on other parties (h).  
within fourteen days after the date hereof.

Take notice, that if you fail to appear or deliver a defence in due time the said petition may as against you be ordered to be taken as confessed.

Dated the — day of —.

---

## CHARGING ORDER.

In the [*ante*, p. 315].

In the matter of an Act passed in the session held in the 1st & 2nd years of the reign of Her present Majesty, chapter 110, and of an Act passed in the session of the 3rd & 4th years of the reign of Her present Majesty, chapter 82,  
and

In the matter of A. B. of —.

To Her Majesty's High Court of Justice :

The humble petition of C. D. of —.

Showeth as follows :

1. [*State the judgment or order which has been obtained against the debtor.*]
2. [*State the debtor's title to or interest in the property sought to be charged.*]

Your petitioner, therefore, humbly prays :

1. That the said sum of £—— Reduced £3 per cent. Annuities may stand charged with the payment to your petitioner of the said sum of £—— and interest thereon at the rate of £4 per cent. per annum from the — day of — until payment, unless the said A. B. shall within one calendar month after service of the order to be made upon this petition [*or shall before the — day of —*] show good cause to the contrary.
2. That no part of the said annuities may be sold, transferred, paid out, or otherwise dealt with,

64.  
Petition for  
charging order  
on fund in  
Court.

without notice to your petitioner, until the order to be made on this petition shall be made absolute or be discharged [*ante*, p. 294].

Or that such other order, &c. [*ante*, p. 316].

And your petitioners will ever pray, &c.

NOTE. It is not intended to serve this petition on any person.

#### MARRIED WOMEN'S PROPERTY ACT, 1870.

65.

Petition for appointment of trustee to receive policy moneys (2).

In the [*ante*, p. 315].

In the matter of a policy effected on the life of A. B.,  
and

In the matter of the Married Women's Property Act,  
1870.

To Her Majesty's High Court of Justice.

The humble petition of C. B. the wife of the above-named A. B. of, &c., by E. F. of, &c., her next friend, and of X. B. and Y. B. respectively infants, by the said E. F. their next friend.

Showeth as follows :—

[*Show how the policy was effected, the marriage and the issue of the marriage, the death of A. B., and the proposed trustee.*]

Your petitioners therefore humbly pray :

1. That the said — may be appointed trustee to receive and give a good discharge for the moneys secured by and payable under the said policy numbered —, effected on the life of the said A. B. in the — Life Assurance Company.
2. That the respective rights and interests of your petitioners in the moneys secured by the said policy may be declared.

Or that such other order, &c. [*ante*, p. 316].

And your petitioners will ever pray, &c.

NOTE. It is, &c.

(2) For a complete form, see Griffith's Married Women's Property Act, p. 83.



INVESTMENT ON REAL SECURITIES IN IRELAND.

In the [*ante*, p. 315].

66.

Petition for  
leave to invest.

In the matter of the trusts of, &c.

and

In the matter of the Act 4th & 5th Will. IV.,  
chapter 29, intituled "An Act for facilitating the  
loan of money upon landed securities in Ireland."

To Her Majesty's High Court of Justice.

The humble petition of, &c.

Showeth as follows :—

[*State the instrument creating the trust, the persons interested,  
the present investment of the trust fund, the proposed mortgage  
and its desirability.*]

Your petitioners therefore humbly pray that they  
may be authorised to raise the sum of £—— [*state  
how*], and to lend the said sum of £—— upon the  
security of a mortgage of the said real estate at ——  
in Ireland.

Or that such other order, &c. [*ante*, p. 316].

And your petitioners will ever pray, &c.

NOTE. It is, &c. [*ante*, p. 303].

GUARDIAN AD LITEM.

In the [*ante*, p. 315].

67.

Petition  
of course for  
appointment of  
guardian *ad  
litem*.

[*Title of action or matter and reference to record*].

To Her Majesty's High Court of Justice.

The humble petition of the defendant C. D., an infant,  
by E. F. of ——, his next friend,

Showeth as follows :—

1. The plaintiff has issued a writ of summons against your  
petitioner, who has appeared thereto.

2. The said E. F. has no interest in this action adverse to

your petitioner, and is a proper person to be assigned his guardian *ad litem* [*ante*, p. 7].

Your petitioner therefore humbly prays that the said E. F. may be assigned his guardian, by whom he may defend this action.

And your petitioner will ever pray, &c.

#### LEAVE TO ATTEND PROCEEDINGS.

[*Title and address as in last form.*]

The humble petition of — of —

Showeth as follows :—

Your petitioner has been served with notice of the judgment [*or order*] made in this action dated the — day of —.

Your petitioner claims to be interested in the subject-matter of this action, and desires to attend the proceedings under the said judgment [*or order*].

Your petitioner therefore humbly prays that he may be at liberty to attend the proceedings under the said judgment [*or order*] accordingly.

And your petitioner will ever pray, &c.

#### IN FORMÂ PAUPERIS.

[*Title and address as in form, 67.*]

The humble petition of the above-named plaintiff,  
A. B.

Showeth as follows :—

1. [*State the action and show the plaintiff's claim.*]
2. [*State shortly appearance and other subsequent proceedings in the action.*]
3. Your petitioner is not worth £5, his wearing apparel and the subject-matter of this action alone excepted.

(j) *Ante*, p. 309.

(k) *Ante*, p. 310.

68.  
Petition of  
course for  
leave (j).

69.  
Petition of  
course for leave  
to sue in  
*formâ*  
*pauperis* (k).

Your petitioner, therefore, humbly prays that he may be at liberty to prosecute this action *in formâ pauperis*, and that —, esquire, who has subscribed this petition, thereby certifying your petitioner's just cause of action, may be assigned as his counsel, and that Mr. — may be assigned as his solicitor.

And your petitioner will ever pray, &c.

EXAMINATION DE BENE ESSE.

[*Title and address as in form 67.*]

The humble petition of the above-named plaintiff

A. B.

70.  
Petition for  
leave to exa-  
mine witness  
*de bene esse*. (1)

Showeth as follows :

1. Your petitioner has lately commenced this action against the defendant and the defendant has appeared thereto.

2. E. F. of — is a material witness in this action for your petitioner.

3. The said E. F. is upwards of seventy years of age [*or as the case may be, see ante, p. 312*], and your petitioner is desirous of examining him *de bene esse*.

Your petitioner, therefore, humbly prays that he may be at liberty to examine the said E. F. as a witness on his behalf in this action *de bene esse*, saving all just exceptions.

And your petitioner will ever pray, &c.

(1) *Ante*, p. 312.



# INDEX.

---

- ABANDONMENT OF RAILWAYS ACT, 50, 161
- ABROAD. *See* JURISDICTION.
- ACKNOWLEDGED DEED,  
    when necessary on payment out, 23
- ACKNOWLEDGMENT. *See* MARRIED WOMEN.
- ACQUITTED ON GROUND OF INSANITY,  
    property of prisoner, may be dealt with on petition, 288
- ACT OF PARLIAMENT,  
    evidence of, having passed, 49
- ACTION (PETITION IN), 2  
    *form of petition in*, 315
- ADDRESS  
    of petition, 2  
    of petitioner, statement of, in petitions, 3
- ADDRESS FOR SERVICE, 38, 114
- ADJOURNMENT  
    of petition to chambers, 8
- ADVERTISEMENTS,  
    Declaration of Title Act, under, 302  
    Railway Companies Act, under, 203, 205  
    reduction of capital, of petition for, 190  
    Settled Estates Act, under, 120  
    winding-up petition, of, 168
- ADVICE AND DIRECTION OF COURT, 265-268  
    action not prevented by, 267  
    appeal, no, 267  
    application for, how made, 267  
    costs, 268  
    evidence not admitted on, 267  
    indemnity to trustees, 266  
    inquiries will not be directed, 267  
    order, how passed and entered, 268

ADVICE AND DIRECTION OF COURT—*continued*.

- petition for, 267
  - title of, 267
  - by whom presented, 267
- service of petition, 267
- signature of counsel to petition, 267
- what questions will be decided on petition for, 265
- who may petition, 267
- form of petition*, 355

## AFFIDAVITS,

- costs of unnecessary matter in, 12
- cross-examination on, 11
- form and contents of, 12
- marksman, by, 11, n.
- filed in the cause or in another matter, 12; in another action, 313
- negating adverse claims, 59
- of fitness of new trustees, 261
  - form of*, 354 ANCHP
- of no incumbrance, 59
  - form of*, 325
- of no settlement, 30
- of service, 8, 84
- re-swearing, on amendment of petition, 12

AGREEMENTS AS TO COSTS. *See* SOLICITORS.ALLOWANCE OF INCOME, *PENDENTE LITE*, 18AMALGAMATION OF ASSURANCE COMPANIES. *See* LIFE ASSURANCE COMPANIES.

## AMENDMENT OF PETITION, 10

- how and when made, 10
- affidavits need not be re-sworn nor petition re-answered, 10, 12
- what may be introduced by amendment, 10

## APPEAL

- no longer by petition, 14
- time within which, must be brought, 14, 44, 186

## APPEAL COURT

- cannot hear original petition, 14
- cannot order a transfer, 11

## APPEARANCE,

- after judgment, leave to enter, 309
- conditional, leave to enter, 309
- unnecessary, costs of, 13

APPOINTMENT OF NEW TRUSTEES. *See* TRUSTEE ACTS.

## ARBITRATOR,

- attendance of witnesses before, 313
- delivery out of court of documents to, 313

- ARRANGEMENT WITH CREDITORS  
    under Railway Companies Act. 1867 ; 201  
    under Joint Stock Companies Arrangement Act, 198
- ASSIGNMENT OF PETITION, 166
- ASSURANCE COMPANIES. *See* LIFE ASSURANCE COMPANIES.
- ATTEND INQUIRY (LEAVE TO). *See* INQUIRY.
- ATTENDING PROCEEDINGS,  
    petition of course for leave to attend, 309  
    *form of petition*, 368
- ATTESTING WITNESS,  
    proof of execution by, 60, 262
- ATTORNEY (POWERS OF). *See* POWERS OF ATTORNEY.
- ATTORNEYS. *See* SOLICITORS.
- BANKRUPT  
    trustee, removal of, 252
- BILLS OF COSTS. *See* SOLICITORS.
- BRANCH OF COURT,  
    orders made in two branches, subsequent application, 58
- BROKER'S COMMISSION,  
    broker of Paymaster-General must be employed, 48  
    brokerage, how paid, 79, n.
- BUILDINGS,  
    investment in, 65
- BURIAL ACTS, 241
- CAUSE (PETITION IN A), 2  
    *form of*, 315
- CHAMBERS (ADJOURNMENT OF PETITION TO), 8
- CHANGE OF SOLICITOR. *See* SOLICITORS.
- CHARGE FOR COSTS. *See* SOLICITORS.
- CHARGING ORDER, 293  
    application for, how made, 294  
    in what cases an order may be obtained, 293  
    evidence on petition for, 294  
    order *nisi*, 294  
    order absolute, 295  
    payment out of fund charged, when ordered, 295  
    proceedings to protect fund, 295  
    service, 294, 295  
    what property may be charged, 293  
    *form of petition for*, 365

CHARITABLE TRUSTS ACT, 242

CHARITIES. *See* ROMILLY'S ACT.

new trustees, appointment of, 237, 254

payment out to, 26, 37, 68

CHARITY COMMISSIONERS,

consent of, when necessary, 26, 37, 238

CHILD-BEARING (WOMAN PAST),

payment out to, 23

CHOOSE IN ACTION (VESTING OF). *See* TRUSTEE ACTS.

CHURCH BUILDING ACTS, 241

COLLUSIVE PETITION, 181

COMMISSION. *See* LUNACY.

COMMISSIONERS. *See* CHARITY COMMISSIONERS.

COMPANIES ACTS. *See* WINDING-UP PETITIONS—REDUCTION OF CAPITAL—PROSECUTION OF DIRECTORS.

COMPROMISE,

enforcing, 299

sanction of court to, when necessary, 299

CONDITIONAL APPEARANCE. *See* APPEARANCE.

CONFIRMATION OF MASTER'S REPORT. *See* LUNACY.

CONFIRMATION OF SALES ACT, 1862

petition for sale of surface and minerals separately, 140

*form of petition*, 337

CONSENT, petitions of course by, 17

CONSENT OF TRUSTEES TO ACT, 261

*form of*, 354

CONTEMPT. *See* MARRIAGE OF WARDS OF COURT.

CONVERSION OF CONSOLS INTO OTHER SECURITIES,

petition for, 93

CONVEYANCING COSTS (TAXATION OF),

Lands Clauses Consolidation Act, under, 87

CO-PETITIONERS,

what persons should be made, 14

COPYHOLD ACTS,

applications under, how made, 307

CORPORATION (SEAL OF),

when required to petitions, 4, 25, 49

COSTS, 12-14

agreement as to costs. *See* SOLICITORS.

appearance, of, 13

evidence, of unnecessary, 12



**COSTS—continued.**

- petitions, of, are now in discretion of the court, 12
- security for, 5, 185, 187
- taxation of bills of costs. *See* SOLICITORS.
- taxation of conveyancing costs, 87
- tender of, 13
- two petitions, of, 14, 264

**COUNSEL (SIGNATURE OF)**

- to petition, when necessary, 3

**COUNTY DEBENTURE ACT, 304**

**COURSE (PETITIONS OF), 15-17, 308**

**CREDITORS. *See* ARRANGEMENT WITH CREDITORS.**

**CRIMINAL PROSECUTIONS. *See* PROSECUTION OF DIRECTORS.**

**CROSS PETITIONS, 36, 279**

**CROSS-EXAMINATION**

- of person making affidavit, Court may order, 11

**CUSTODY OF INFANTS. *See* INFANTS.**

**DATES,**

- expression of, in petition, 3

***DE BENE ESSE*, (EXAMINATION),**

- petition of course for leave to examine witness, 312
- form of petition*, 369

**DEBENTURES. *See* RECEIVER.**

**DEATH OF LUNATIC (PETITION ON). *See* LUNACY.**

**DEATH OF SOLE PETITIONER, 10**

**DECLARATION OF RIGHTS,**

- when made on petition, 7, 8, 35

**DECLARATION OF TITLE ACT, 1862,**

- petition under, 301

**DEED. *See* ACKNOWLEDGED DEED—DISENTAILING DEED.**

**DEFAULT OF APPEARANCE, 8**

- service on defendant who has made default, 6

**DEFENCE ACTS, 91**

**DELIVERY OUT OF COURT OF DOCUMENTS,**

- petition of course for, 312

**DEMURRER. *See* WINDING-UP PETITIONS.**

**DEPOSIT. *See* PARLIAMENTARY DEPOSITS—LIFE ASSURANCE COMPANIES  
—LANDS CLAUSES CONSOLIDATION ACT.**

**DIRECTION (JUDICIAL). *See* ADVICE AND DIRECTION.**

**DIRECTORS. *See* PROSECUTION OF DIRECTORS.**

## DISABILITY (PERSONS UNDER),

petitions by, 4  
service on, 6

## DISCHARGE,

committee of lunatic, of, 280, 284  
distringas, of, 312

## DISCLAIMER BY TRUSTEE,

evidence of, 262

## DISENTAILING DEED

necessary on payment out to tenant in tail, 26, 69

## DISTRINGAS (DISCHARGE OF),

petition of course for, 312

## DIVIDENDS (PAYMENT OF),

form of order for, 26, 62

DOCUMENTS. *See* DELIVERY OUT OF COURT.

## ECCLESIASTICAL LEASES,

purchase of reversion by trustees, 151  
sale of reversion, 151

## ENFORCING RETURN OF WRIT BY SHERIFF, 314

ENFRANCHISEMENT. *See* LAND TAX REDEMPTION ACT.ENTERING JUDGMENT *NUNC PRO TUNC*,

petition of course for leave to enter, 309

## EQUITY TO A SETTLEMENT,

petition to enforce, 298  
giving effect to, on petition under Trustee Relief Act, 35

EVIDENCE, 11, 12. *See* AFFIDAVITS.

## ESTABLISH SALE (petition to), 141

EXAMINATION. *See* MARRIED WOMEN.EXAMINATION, *DE BENE ESSE*,

petition of course for leave to examine witness, 312

## FELON (INFANT),

petition for custody of, 226

## FILING PETITION, 11, 270, 279

## FINES AND RECOVERIES ABOLITION ACT,

petition for consent of Court to disposition by tenant in tail 14  
*form of petition under*, 339

*FORMA PAUPERIS*,

petition for leave to sue or defend in, 310, 311  
*form of petition of course*, 368

## GRAMMAR SCHOOLS ACT, 241

GUARDIAN OF INFANT OR PERSON OF UNSOUND MIND,  
appointment of, 306

GUARDIANS *AD LITEM*,  
appointment of, on petition of course, 6  
*form of petition*, 367

HEARING OF PETITION, 7

HEARSAY EVIDENCE,  
costs of affidavits setting forth, 12

HUSBAND,  
when made co-petitioner with wife, 4, 20, 22

INCLOSURE ACT, 90

INFANTS CUSTODY ACT, 224  
petition by mother for custody or access, 224  
discretion of court, 224  
when an order will be made under the Act, 224  
affidavits on hearing, 225  
service, 225  
application may be made *in forma pauperis*, 225  
or *ex parte*, 225  
order may restrain father from applying for *habeas corpus*, 225  
costs of petition, 226  
agreement in separation deed as to custody, when enforced, 226  
custody of infant felons, 226  
*form of petition*, 348

INFANTS SETTLEMENTS ACT, 227  
marriage settlements of infants must be sanctioned by Court, 227  
sanction is obtained on petition, 227  
who may petition, 227  
title of petition, 227  
evidence, 228  
inquiry as to settlement, 228  
proceedings in chambers, 228  
Court cannot sanction post-nuptial settlement, 229  
unless made by a ward, 229  
form of settlement, 229  
*form of petition*, 349

INQUIRY (LUNACY) LEAVE TO ATTEND, 274

INQUIRY (LUNACY) PETITION FOR, 269  
affidavits in support of, 270  
attestation of, 270  
attorney-general may present, 269  
need not be served, 271  
benefit of lunatic, must be shown to be for, 270  
carriage of inquiry, 272

INQUIRY—*continued.*

- costs of, 272
- death of petitioner before order executed, 272
- evidence in support of, 270
- hearing, when set down for, 271
- husband or wife, consent of, 269
- jury, demand for inquiry by, 271
- next of kin, assent of, when necessary, 269
- notice, to be endorsed on petition, 271, 356
- pre-audience, where there are two petitions, 272
- presented, by whom, 269
- service of, 270
- signature to, 270
- strangers, by, 269
- form of petition*, 356

## INVESTMENT OF CASH UNDER CONTROL OF THE COURT, 93-95

- applications for, how made, 93
- what investments allowed, 93
- who may petition for conversion, 93
- service of petition, 93
- where an order will be made for conversion, 94
- provision against receiving three dividends, 95
- costs of petition, 95
- request for investment necessary, notwithstanding order, 95

## INVESTMENT ON REAL SECURITIES IN IRELAND ACT, 303

- form of petition under*, 367

## JOINT-STOCK COMPANIES ARRANGEMENT ACT, 1870; 198

- company being wound up may arrange with its creditors, 198
- arrangement must be sanctioned by Court, 198
- majority of creditors must consent, 198
- what is a majority, 198
- debenture holders are creditors, 198
- arrangement must be *bond fide*, 199
  - not prejudice preferential creditors, 199
- petition for sanction, when presented, 199
  - title of petition, 200
- costs, 200
- form of petition*, 345

## JUDGMENT DEBTORS ACT, 148-150

- "actual delivery," what is, 148
- equitable execution, 148, 149
- petition for sale of debtor's interest, when necessary, 148, 149
  - costs of, 150
  - service of, 149
- surplus lands of railway may be sold, 149
- form of petition*, 340

## JUDICATURE ACTS,

effect of, on petitions, 1

JUDICIAL OPINION. *See* ADVICE AND DIRECTION OF COURT.

## JURISDICTION,

petitioner out of, 5, 185

service out of, 6, 41

## LAND TAX REDEMPTION ACTS, 143

enfranchisement of copyholds, 143

sale or mortgage, 143

timber, leave to cut, 143

*form of petition under*, 338

## LANDS CLAUSES CONSOLIDATION ACT, 57-90,

affidavit of title and of no other claim, 59

*form of affidavit*, 325

application under, how made, 57

when made by summons, 57, 78

branch of Court, 58

buildings, investment in, 65

Charity Commissioners, concurrence of, 68

conversion, 61, 76

costs of proceedings under, 77

administration, of taking out, 87

adverse litigation, of, 85

affidavits, of, 79, 84

appearance, of, 83

apportionment of, between several companies,

apportionment of ground rent, of, 88

arbitration, of, 72

Attorney-General, of appearance of, 85

broker's commission, 79

buildings, of investment in, 81

carrying over or transfer, of, 82

conveyance, of, 77, 87

copyholds, of enfranchisement of, 81

death of vendor, occasioned by, 81, 86, 87

discretion of Court, as to, 78

disentailing deed, of, 83

Ecclesiastical Commissioners, of appearance of, 85

enrolment of conveyance, of, 81

entry on land before conveyance, in case of, 90

fine on admission to copyholds, 81

incumbrance, of discharging, 80

incumbrancers, of appearance of, 80, 84

infant heir of vendor, 81

insolvency of company, in case of, 86

interim investment, of, 79

investigation and verification of title, of, 87

LANDS CLAUSES CONSOLIDATION ACT—*continued.*

- costs of investment in land, 80, 81
  - larger sum than paid in, 82
  - funds paid in by several companies, 86
- land tax, of redemption of, 80
- lunatic, occasioned by land belonging to, 83
- mortgage, of redemption of, 80
- mortgagees, of, 84
- orders, of obtaining, 77
- outstanding estate, of getting in, 87
- payment out, of, 82
- persons served, of, 83
- power of attorney to receive dividends, of, 79
- purchase of land the subject of a suit, 81
- Queen Anne's Bounty, of Governors of, 85
- reference to conveyancing counsel, of, 81
- refusal to convey, in case of, 79
- re-investment, of, 80
  - unsuccessful attempts, 82
  - "upon execution of conveyance," order for payment of, 82
- remaindermen, of, on petition under 74th sect., 84
  - under 69th sect., 80, 83, 84,
- resettlement of, 80
- sales of stock, of periodical, 79
- several and successive investments, 79, 81
- several petitions, of, 79, 80, 85
- share, of payment out of, 82
- special Acts, under, 87
- taxation of conveyancing costs, 87
  - form of petition for*, 326
- tender of 42s. for, 84
- title, of deduction and verification of, 87
- trustees of, 83, 59
- unnecessary service or appearance, 84
- unsuccessful attempt to invest, 82
- vendor of, 81
- wilful neglect or refusal to convey, 79
- deposit on entry before purchase under ss. 85-87, 88
  - bond for securing purchase money, 88
  - costs, 90
  - interest must be paid by company, 89
  - petition for payment out, 89
    - evidence on, 89
    - service of, 89
- disentailing deed, when necessary, 69
- improvements and repairs, investment in, 65-67
- incumbrance, discharge of, 63
- inquiry as to title, 60
- inquiry as to investment, 61

LANDS CLAUSES CONSOLIDATION ACT—*continued.*

- interim investment, application for, how made, 61
  - “cash under the control of the Court,” investment as, 62
  - mortgage, on, 61
  - payment of dividends, 62
  - service of petition for, 61
  - who may petition for, 58
- land tax, redemption of, 63
- leaseholds, application of moneys arising from, 72
- moneys paid in under s. 76, application of, 75
- payment out, under s. 69, 67
  - corporations, to, 4
  - charities, to, 68
  - commonable rights, to persons having, 68
  - dowress, to, 68
  - lunatic, 70
  - married woman, 69
  - part of fund, 68
  - person entitled by adverse possession, 68
  - tenant for life of manor, 68
  - tenant in tail, 69
  - trustees, to, 68
- payment out of money deposited on entry before purchase, 89
- petitions under,
  - parties, evidence, title, and service of, 57-60
- possession, party in, deemed owner, 76
- re-investment in land and buildings,
  - burial ground, money arising from, 67
  - copyholds, in, 64
  - equity of redemption, not in, 65
  - ground rents, in, 65
  - improvements and repairs, in, 65
  - inquiry as to investment, 60
  - land out of jurisdiction, 65
  - leaseholds, in, 64
  - lunatic's property, of, 65
  - part of fund, of, 64
  - repairs and improvements, 65-67
  - though petitioner absolutely entitled, 64
  - with other funds, 64
- repairs and improvements, investment in, 65-67
- reversions, application of moneys arising from leases and, 72
- service of petitions under, 58, 89
- small sums, application of, 70
- summons, applications under, when made by, 57, 78
- taxation of conveyancing costs, 87
  - form of petition of course for*, 326
- tenant for life,
  - compensation to, for injury, 71

**LANDS CLAUSES CONSOLIDATION ACT—continued.**

tenant for life, payment of dividends to, 62

title of petition, 57

undertaking to build, 67

*forms of petitions under*, 322, 326**LAW OF PROPERTY AND TRUSTEES RELIEF AMENDMENT ACT.***See* ADVICE AND DIRECTION—SALE (PETITION TO ESTABLISH).LEASE BY INFANT. *See* PROPERTY LAW AMENDMENT ACT.LEASE (SURRENDER AND RENEWAL OF). *See* PROPERTY LAW AMENDMENT ACT.LEASES AND SALES OF SETTLED ESTATES. *See* SETTLED ESTATES ACT.LEAVE TO ATTEND INQUIRY. *See* INQUIRY.LEAVE TO ATTEND PROCEEDINGS. *See* ATTENDING PROCEEDINGS.LEAVE TO MARRY. *See* MARRIAGE OF WARDS.LEAVE TO TRAVERSE. *See* TRAVERSE.**LEGACY DUTY,**

how provided for, on payment out, 31

**LEGACY DUTY ACT,**

petitions under, 45

*form of petition under*, 319**LIFE ASSURANCE COMPANIES, 207**

deposit to be made by, before incorporation, 208

petition for investment and payment out of, 208

petition to confirm amalgamation or transfer, 207

advertisement of, 207

notice of, to policy-holders, 207

inspection of deed, 208

cannot be sanctioned if one-tenth of policy-holders dissent, 208

deposit of documents with Board of Trade, 208

*form of petition*, 346

winding up of, 164

for non-compliance with Act, 165, n.

of subsidiary company, 165, n.

test of insolvency under Act, 165

**LIS PENDENS (SATISFACTION OF),**

petition of course to enter, 310

**LORD ST. LEONARDS' ACT, 1859. *See* ADVICE AND DIRECTION.**

petition to establish sale under, 141

**LORD ST. LEONARDS' ACT, 1860. *See* INVESTMENT OF CASH UNDER THE CONTROL OF THE COURT.**



**LUNACY.** *See* INQUIRY—SUPERSEDEAS—TRAVERSE.

confirmation of master's report, 278—280

costs of petition for, 280

• discharge of committee, petition for, 280

filed, petition must be, 279

fund in Court, where there is, 280

order on petition for, 279

petition for, when necessary, 278

presentation of petition, 279

service of petition, 279

*form of petition*, 359

death of lunatic, petition on, 285

administration of estate, not in lunacy, 285

discharge of security, 286

payment out to personal representatives, 285

petition when necessary, 285

evidence on, 286

service of, 286

title and contents of, 285

*form of petition*, 360

person acquitted on ground of insanity, 288

application of his property, 288

small properties of persons of unsound mind not so found, 287

may be dealt with in lunacy, without inquisition, 287

petition for application of, 288

• evidence on, 289

hearing of, 289

service of, 288

*form of petition*, 361

**MAINTENANCE,**

infant, 306

pauper lunatic, 29, 37

person of unsound mind, 25, 287, 306

**MARKSMAN,** affidavit by, 11, n.**MARRIAGE ACT,**

petition under, for sanction of Court, 235

*form of petition*, 351

**MARRIAGE OF WARDS OF COURT,**

ward cannot marry without leave of the Court, 230

contempt, marriage without consent is a, 233

discharge from, petition for, 233

inquiry as to validity of marriage, petition for, 233

leave to marry, 230

application for, how made, 230

chief clerk's certificate as to marriage, 232

evidence on petition, 231

MARRIAGE OF WARDS OF COURT—*continued.*

- payment out on marriage and execution of settlement, 232
- proceedings in chambers, 231
- settlement, how prepared, 231
- title and contents of petition, 231
- who may petition, 230
- form of petition*, 350
- restraining marriage or intercourse with ward, 232
- petition for, 233

## MARRIED WOMEN,

- acknowledged deed by, when required, 23
- consent of, to payment to husband, 23
- co-petitioner with husband, when, 4, 22
- deserted by husband, payment out to, 23
- examination of, 22, 131
  - when dispensed with, 22, 132
- lease, surrender and renewal of, by, 136
- next friend, should petition by, 4
- past child-bearing, 23
- payment out to, 22
  - to women marrying after date of the order, 24

## MARRIED WOMEN'S PROPERTY ACT, 1870,

- policy moneys, appointment of trustee to receive, 296
- form of petition*, 366
- transfer into name of married woman, 297

## MERCHANT SHIPPING ACT, 306

## METROPOLITAN STOCK (investment in), 62

## MINERALS. See CONFIRMATION OF SALES ACT—SETTLED ESTATES ACT.

## MORTGAGE DEBENTURE ACT, 304

## MOTION AND PETITION (distinction between), 2

## MUNICIPAL CORPORATIONS ACT, 241

## NATIONAL DEBT ACT, 54–56

- application for transfer, 54
- rescind order for transfer, petition to, 55
- petition by second claimant, 55
- inquiry as to title, when directed, 55
- legal owner must be petitioner, 55
- accumulations, petitioner not entitled to, 55
- amount of stock unknown, how ascertained, 56
- transfer to credit of a cause, 56
- costs, 56
- unclaimed annuities, Act applies to, 56
- service, 54
- form of petition under*, 321

## NEXT FRIEND,

petition, when presented by, 4

## NUNC PRO TUNC (ENTERING JUDGMENT),

petition for leave to enter, 309

OPINION OF COURT. *See* ADVICE AND DIRECTION OF COURT.

## ORDER,

bespeaking, documents to be left on, 11, 279

how drawn up and entered, 11, 279

recital of, in petition, 3

## ORDERS OF COURSE,

how obtained, 15

discharge of, 16

amendment of, 17

service of, 17

PARLIAMENT (ACTS OF). *See* TABLE OF STATUTES.

## PARLIAMENTARY DEPOSITS,

payment in, 47

investment, 47, 50

payment out, 48

who may petition for, 48

evidence on petition for, 49, 50

petition for, is vacation business, 53

Railway Companies Act, 1867, 50

Railways Construction Act, 49

Tramways Act, 1870, 52

compensation to landowners, 53

inquiry and advertisements, 53

*form of petition for payment out*, 320

## PARTIES TO PETITIONS, 4, 5

## PAUPER,

petition by, 4

leave to sue as, 310

## PAUPER LUNATIC,

payment out of fund belonging to, 29, 37

## PAYMENT OUT GENERALLY,

abroad, infant or married woman, fund belonging to, 25

absolutely entitled, retaining part of fund where person is, 20

administrator, *ad litem*, not ordered to, 28

application for, how made, 18

where assignment of fund is disputed, 20

apportioned dividends on death of tenant for life, 27

assignee of fund, to, 20

attorney, power of, to holder of, 28

chambers, application for, when made in, 18

PAYMENT OUT GENERALLY—*continued*.

- charity trustees, to, 26, 68
- child bearing, to women past, 23
- class, where petitioner is one of a, 20
- corporation, of fund belonging to, 25
- costs of petition for, 33
- crown, of fund belonging to, 28
- deaf, dumb, and blind person, to, 25
- death, on presumption of, after seven years, 31
- evidence on application for, 29
- foreign probate, not to personal representatives of, 28
- husband, petition for, by wife should be served on, 20, 22
- infant domiciled abroad, of fund belonging to, 25
- infant, to father of small fund belonging to, 28 .
- legacy duty, payment of, on, 31
- married woman to, 20, 22, 24
  - deserted by, or separated from husband, 23
  - as personal representative, 24
- order for, documents to be left on bespeaking, 29
- partners, to, 27
- pauper lunatics, of fund belonging to, 29
- periodical payments, orders for, 73
- personal representatives, to, 27
- petition for, title and contents of, 18
- presumption of death, on, 31
- prospective orders for, 21
- purchase-money, of, consent of purchaser, when necessary, 30
- separate account, of fund standing to, 19, 20
- separate use, of fund settled to, 22
- service of petition for, 19
- small sums, of, 28
- sole trustee, to, 26
- succession duty, payment of, on, 31
- successive tenants for life, to, 26
- summons, application for, when by, 18
- tenant in tail, to, 26
- transfer of fund to another cause, 21
- trustees, to, 26
- two funds, of, on one petition, 21
- undertaking to apply, on, 25, 28
- unsound mind, person of, to next friend, 25
- form of petition for*, 315

*PENDENTE LITE* (ALLOWANCE OF INCOME),  
 application for, how made, 18

## PETITIONER,

- who may be, 4
- death of sole, 10

PETITIONS OF COURSE,

general practice with regard to, 15  
what orders may be obtained on, 308

PETITIONS OF RIGHT ACT, 290

appearance and pleading, 291  
applicable, to what cases, 290  
costs on, 292  
fiat of Her Majesty, how obtained, 291  
filing of petition, 291  
interrogatories, who may be served with, 292  
new procedure applicable to, 292  
old practice may be followed, 292  
pauper, by, 292  
service of, 291  
*form of petition*, 364

PLEADING,

petition is a, within the meaning of the Judicature Acts, 1

POLICY MONEYS. *See* MARRIED WOMEN'S PROPERTY ACT.

POWERS OF ATTORNEY,

payment out to holder of, 25, 28

PRESENTATION OF PETITION,

how presented in Chancery, 4  
Lunacy, 279  
who may present, 4

PRESUMPTION,

of death after seven years, 31  
that woman is past child bearing, 23

PRINTED, petition need not be, 3

PRIORITY OF PETITIONS, 171

PRIVATE ACT,

title of petition presented under, 2

PROPERTY LAW AMENDMENT ACT, 136

lease by infant, 137  
maintenance, petition for, under, 139  
surrender and renewal of lease,  
where lessor is an infant or married woman, 136  
where lessor is out of jurisdiction, 138  
*form of petition under*, 336

PROSECUTION OF DIRECTORS, &c.

petition for leave to prosecute, 188

PROSPECTIVE ORDERS,

for payment out, 21

PROTECTOR OF SETTLEMENT. *See* FINES AND RECOVERIES ABOLITION ACT.

- RAILWAY COMPANIES ACT, 1867, 201**  
receiver and manager, appointment of, under, 305  
scheme of arrangement under, 201  
assents required to, 201  
when not required, 202  
must be sanctioned by court, 201  
application for sanction how and when made, 201  
who may petition, 202  
advertisement of petition, 203  
who may be heard, 203  
order, when made, 204  
who are bound by scheme, 204  
inrolment of order, 205  
advertisement of order, 205  
rehearing, 205  
advertisement of confirmation of scheme, 206  
*form of petition*, 345
- RAILWAYS CONSTRUCTION ACT, 1849**
- RECEIVER (PETITION FOR APPOINTMENT OF),**  
under County Debentures Act, 304  
Mortgage Debenture Act, 304  
Railway Companies Act, 305
- RECTIFICATION OF SETTLEMENT ON PETITION, 35**
- REDUCTION OF CAPITAL, 189**  
special resolution for,  
when it must be confirmed by the court, 189  
how confirmation obtained, 199  
company must add "and reduced" to its name, 189, 197  
when the addition may be dispensed with, 199  
petition for order to confirm,  
title of, 190  
*form of*, 343  
placing in list, 190, 195  
advertisement of presentation, 190  
hearing, 195  
summons for directions as to settling list of creditors, 190  
affidavit verifying list, 191  
who entitled to be entered on list, 191  
inspection of list, 192  
notice of list to creditors, 192  
advertisement of list, 192  
affidavit of result of notices, 193  
notice to creditors to come in and prove, 193  
costs of proof, 193  
Court may dispense with consent on giving security, 193  
chief clerk's certificate as to list of creditors, 194  
what creditors may appear at the hearing, 195  
costs of appearance, 196

## INDEX.

### REDUCTION OF CAPITAL—*continued*.

- hearing of petition, 196
- order on petition, 196
- minute showing reduction, 197
- order and minute must be registered, 197
- who are entitled to object to reduction, 191

### REHEARING (petition for), 15, 187

### RENEWAL OF LEASE. *See* PROPERTY LAW AMENDMENT ACT.

### RESTORING PETITION TO PAPER, 9, 115

### RIGHT (PETITION OF). *See* PETITIONS OF RIGHT ACT.

### ROMILLY'S (SIR SAMUEL) ACT, 236-242

- appeal from order under, 241
- applicable, to what cases, 237
- application under, how made, 238
- attorney-general, sanction of, 239
  - petition by, 238
- certificate of counsel and solicitor as to petition, 239
- Charity Commissioners, sanction of, 238
- costs under, 241
- petition must be signed and certified, 239
  - who may present, 238
- procedure under, not abolished, 236
- proceedings in chambers, 240
- sanction of Charity Commissioners, 238
  - Attorney-General, 239
- scheme, settling, 240
- scope of the Act, 236
- service of petition, 239
- who may petition, 238
- form of petition*, 352

### SALE,

- judgment creditor, at instance of, 148
- land and minerals separately, of, 108, 140
- land tax, for redemption of, 143
- petition to establish, where timber money has been misapplied, 141
- settled estates and timber, of, 106

### SATISFACTION OF *LIS PENDENS*,

- petition for entry of, 310

### SCHEME OF ARRANGEMENT. *See* RAILWAY COMPANIES ACT—JOINT STOCK COMPANIES ARRANGEMENT ACT.

### SEAL OF CORPORATION OR COMPANY,

- when required to petition, 4, 25, 49

### SECOND PETITION. *See* TWO PETITIONS.

### SECURITY FOR COSTS. *See* COSTR.

## SERVICE GENERALLY,

- how effected, 5
- on defendant who has not appeared, 6
  - lunatic, 7
  - person of unsound mind, 6, 119
  - person out of jurisdiction, 6
- substituted service, 5
- time for service, 5

## SETTING DOWN PETITION FOR HEARING, 7, 114

## SETTLED ESTATES ACT, 1877 ; 96-135

- advertisement of petition, 120
  - when necessary, 121
  - title of, 121
  - practice as to, 122
  - leave to appear after, 122
- affidavit of no settlement when necessary, 125
- agricultural leases, 99
- application of moneys arising from sales or leases, 123
- applications under, how made, 96
- bankrupts, 129
- "best rent," meaning of, 100
- building leases, 99
- conditions, 101, 102
  - of re-entry in lease, 101
  - special, may be inserted, 102
  - that lease be settled in chambers, 105
  - motion to strike out, 106
- consents to application, what necessary, 116
  - dispensed with, when, 117
  - infants, lunatics, and bankrupts, of, 117, 129
  - married women, of, 117, 131
  - notice to non-consenting parties, 118
  - refusal to consent, 116
  - trustees and beneficiaries, of, 117
  - unascertained persons, of, 116
- conversion, 125
- conveyance,
  - execution of, 110
  - settling in chambers, 108
- copyholds, lease of, 102
  - sale of, 107
- costs, 128
- counterpart of lease, 101
- courts, what, have jurisdiction, 96
- covenants and conditions in lease, 101
- customary leases, 99
- dedication of roads, &c., 109
- dispensing with consent, 117 ; with notice, 119



SETTLED ESTATES ACT—*continued*.

- casement, lease of, 99
- enfranchisement of copyholds, 107
- entail created by Act of Parliament, 134
- evidence, 103, 115
- examination of married women, 131
  - by whom taken, 132
  - when taken, 132
  - when dispensed with, 132
  - forms relating to*, 332-334
- exchanges, 107, n.
- fee farm rent, 99
- fees and allowances, 129
- general powers, when authorised, 103, 104, 107
- guardian, appointment of, 130, 131
  - forms of summons*, 331
- hearing of petition, 114
- indorsement of power on settlement, 122
- investment of moneys, 123, 124
  - interim investment, 125
- irregularity, proceedings not invalidated by, 128
- leases, what may be authorised, 99
  - at what rent, 100 ; for what term, 99
  - conditional contract for, 102
  - evidence, on application for, 103
  - execution of lease, 103
  - form and contents of, 101
  - general power to grant, 103, 104
  - settled in chambers, when, 105
  - surrender and renewal of, 102
  - timber, must not authorise felling of, 101
  - form of petition for*, 328
- leave to be heard, 122
- lunatic, petition by committee of, 113
  - consent of, how given, 129
  - where tenant in tail, 130
- mansion house, lease of, 100
- marriage of party, amendment of petition, 113
- married women, petition by, 113, 131
  - consent of, to application, 117, 131
- minerals may be excepted or sold separately, 103
- mining lease, 99, 101
- moneys arising from sales or leases, application of, 123
- new trustee appointed, when, 111
- notice and notifications, 118-122
  - dispensing with notice, 119
  - notice to be indorsed on settlement, 122
- occupation lease, 99
- order, form of, 134

SETTLED ESTATES ACT—*continued*.

- order, made subject to rights of non-consenting parties, 120
  - court may dispense with Orders, 135
- Palatine Court, jurisdiction of, 96, n.
- Parliament, application to, a bar to application, 127
  - evidence as to, 127
- parties to petition, 116
- payment out, 124
- peppercorn rent, 100
- perusal of petition, 119, 122
- petition, who may present, 111
  - title and contents of, 114
  - hearing, standing over, and evidence, 114, 115
  - form of*, 327
- powers of the Act, when exercisable, 126
  - general powers to sell or lease may be given, 103, 104, 107
  - extending the power in the settlement, 127
  - when once vested may be transferred on petition, 105
- proceedings for protection, 111
- reference to chambers, when necessary, 108
- renewal of lease, 102
- rent, what must be reserved, 100, 101
- repairing lease, 99
- restoring petition to paper, 115
- reversion, lease in, cannot be authorised, 99
  - application of moneys arising from, 126
- roads, streets, &c., laying out, 109
  - how expense of, to be paid, 109
- sales of settled estates or timber, when authorised, 106
  - consideration for sale, may be a rent charge, 108
  - conveyance, execution of, 110 ; when settled in chambers, 109
  - general powers of, whether authorised, 107
  - how made, 180 ; out of court, 180
  - minerals and surface may be sold separately, 108
  - order for, may include other lands, 107
  - reference to chambers, 108
  - form of petition for*, 327
- service of notice, 116—122
  - address for service, 114
  - directions for service on person of unsound mind, 11
  - of petition dealing with purchase-money, 124
  - evidence of, on trustees, 115
- setting down petition for hearing, 114
- “settled estate,” what is a, 97
- “settlement,” what is a, 96
- settling lease or conveyance in chambers, 105, 108
- standing over generally, 115
- “succession,” what is a, 97
- surrender of lease, 102

SETTLED ESTATES ACT—*continued*.

- tenant for life deemed entitled notwithstanding incumbrances, 112
  - assignee of, may petition, 111
- timber, sale of, may be authorised, 106
  - felling of may not be authorised in lease, 101
- time for proceedings under, 135
- title of petition, 114
- trustees do not represent their beneficiaries, 117
  - service on, 117, 120
    - payment out of purchase-money to, 125
- unsound mind, person of, cannot consent, 113
  - service on, directions for, 119
- waste, lease may be authorised, though involving, 99
- water-leaves or water-mills, leases of, 99
- way-leaves, lease of, 99
  - grant of, may be included in sale or lease of minerals, 101, 108
- forms of petitions, summons, &c., under the Act, 327-335*

SETTLEMENT (EQUITY TO). *See* EQUITY TO SETTLEMENT. :

SETTLEMENTS (MARRIAGE). *See* INFANTS' SETTLEMENTS ACT.

SHERIFF (RETURN OF WRIT BY),  
petition of course to enforce, 314

SHIP (SALE OF). *See* MERCHANT SHIPPING ACT.

SIGNATURE OF COUNSEL,  
when required to petitions, 3

SMALL PROPERTIES OF PERSONS OF UNSOUND MIND. *See* LUNACY,

## SOLICITORS,

- agreements by, as to costs, 217
  - petition for opinion of Court as to, 217
  - enforcing or setting aside, 217, 219
  - re-opening, 218
  - with guardians, trustees, or committees, 219
  - application on death or incapacity of solicitor, 219
    - change of solicitor, 220
  - must be signed by client, 217
- change of, 221
  - when an order is necessary, 221, 222
  - may be obtained on petition of course, 221, 223
  - service of order, 222
  - order should not provide for first solicitor's costs, 222
  - when order may be discharged, 222, 223
  - effect of, on agreement as to costs, 220
  - form of petition, 348*
- charging order for costs, 209
  - solicitor entitled to, on property recovered or preserved, 209
  - by what Court or judge order should be made, 210
  - when property is "recovered or preserved," 211

SOLICITORS—*continued*.charging order for costs—*continued*.

- extends to property of all kinds, 211
- not defeated by voluntary conveyance, 209
- not made when claim barred by Statute of Limitations, 209
- application for, how made, 210
- where order already made for payment out of a particular fund, 212
- on lunatic's property, 212
- who is entitled to a charge, 210
- charge not affected by assignment of fund, 212
- service of petition, 210
- what property is chargeable, 210
- form of petition for*, 347

## taxation of costs, 213

- order for, when obtained on petition of course, 213
  - a special application is necessary, 213
- who may petition, 214
- title of petition, 214
- service of order, 215
- form of order, 215
- costs of unnecessary special application, 216
- order, when discharged, 216
- form of petition of course*, 346

## STANDING OVER (PETITIONS), 9, 115

STATUTES. *See* TABLE OF STATUTES.STOCK (VESTING ORDER OF). *See* TRUSTEE ACTS.

## STOP ORDER,

- application for, now made by summons, 295

## SUBSTITUTED SERVICE, 5

## SUCCESSION DUTY, 31

- how provided for, on payment out, 31

## SUPERSEDEAS, 281

- conditional, may be, 284
- discharge of committee's security on, 283
- evidence on petition for, 282
- examination of lunatic, 283
- grounds for, 281
- petition for, who may present, 282
- service of petition, 282
- suspending commission, 283
- form of petition for*, 359

SURRENDER OF LEASE. *See* PROPERTY LAW AMENDMENT ACT.TAXATION OF COSTS. *See* SOLICITORS.TENANT IN TAIL (DISPOSITION BY). *See* FINES AND RECOVERIES ABOLITION ACT.

TENDER OF COSTS, 13, 84

TIMBER,

- leave to cut, under Land Tax Redemption Act, 143
- sale of, under Settled Estates Act, 107
- where timber money has been misapplied, establishing sale, 141

TITLES OF PETITIONS, 2

TRANSFER OF FUND,

- from one cause to another, 21
- to Chancery Division in Ireland, 21
- to Palatine Court of Lancaster, 21

TRANSFER OF PETITION, 11, 58, 182

TRANSLATOR OF DEPOSITIONS,

- petition of course for the appointment of, 313

TRAVERSE (LEAVE TO), 275

- alienee of lunatic, application for, by, 275
- aggrieved, by any person, 275
- barred, right to traverse when, 276
- costs of, 277
- death of lunatic, not after, 276
- entitled to, who, 275
- misconduct, right may be lost by, 275
- not oftener than once, 277
- order must be filed, 276
- right, is matter of, 275
- security for trial, 276
- time for presenting petition, 276
- form of petition for*, 358

TRUSTEE ACTS, 1850, 1852,

- abroad, trustee, 244, 253
- action to declare petitioner's right may be directed, 262
- alien's will, appointing new trustees of, 254
- applications under, how made, 256
- appointing person to convey or transfer, 250
- appointment of new trustees, 251
  - when appointed by the Chancery Division, 251, 255
  - in Lunacy, 252
- what number will be appointed, 255
- who may be appointed, 255
- bankrupt trustee, removal of, 252
- beneficially interested, who is a person, 258
- cause, application in a, may be made without petition, 256
- chambers, applications under, when made at, 256
- charities, appointing new trustees of, 254
- chose in action, vesting order of, 248
  - when made in Lunacy, 248
  - in Chancery, 249

TRUSTEE ACTS, 1850, 1852—*continued*.

- co-heirs of mortgagee, 244, n.
- colonies, Acts extend to, 248
- companies to transfer stock, order directing, 251
- contingent interest, person having, may petition, 258
- contingent rights of unborn persons, 245
- continuing trustees, appointment of, 256
- continuing and new trustees, vesting property in, 246
- copyholds, vesting order of, 247
  - consent of lord, 247
  - appointing person to surrender, 251
- costs of proceedings under the Act, 262
  - apportionment of, between two trust funds, 264
  - charged on estate, may be, 263
  - corpus or income, whether paid out of, 263
  - irrelevant charges, costs occasioned by, 263
  - lunacy, in cases of, 263
  - respondent, when ordered to pay, 263
  - two petitions, of, 264
  - vendor, costs of vesting order, when payable by, 263
- creditor, plaintiff in administration suit, may petition, 258
- creditors' decd, appointing new trustees of, 252
- death of trustee, uncertainty as to, 244, 249
- deceased person, stock standing in name of, 249
- devisee of trustee unknown, 244
- disclaimer by trustee, evidence of, 262
- donee of power, incapacitated, 252
- evidence, 261
  - on application for appointment of new trustees, 261
  - vesting order, 261
  - disclaimer, of, 262
  - execution of will, of, 262
- felony, trustee convicted of, 254
- found, where trustee cannot be, 244, 249
- bearing of petition, 262
- heir, trustee dying without, vesting order, 244
  - of mortgagee is a trustee within, 246
  - of vendor is a trustee within, 246
  - of trustee unknown, 244
- husband of a female trustee, is a trustee, 248, n.
- infant trustee or mortgagee, 244, 249
- Ireland, vesting lands in, 248
- jurisdiction, trustee out of, 244, 249
- Land Transfer Act, 260
- "lands," meaning of, 246
- lunacy, application when made in, 257
- lunacy, commission of, may be directed, 262
- lunatic, infant trustee, 244
  - trustee or mortgagee, 243

TRUSTEE ACTS, 1850, 1852—*continued*.

- mortgagee, 246
- neglect or refusal of personal representative to transfer, &c., 249
  - of trustee to convey, 245
  - to transfer, 249
- new trustees, appointment of, 251
- number of trustees, appointed, 255
- petitions under, 256
  - to which court presented, 257
  - by whom presented, 258
  - evidence on, 261
  - service of, 259
  - title of, 257
- purchaser under decree, may petition, 258
  - costs, when payable by, 263
- refusal to convey, 245
  - transfer stock, receive dividends, or sue, 249
- removal of trustee, 252
- sale by court, vesting order after, 245
- service of petition, 259
- suit may be directed, 262
- survivorship, uncertainty as to, 244
- title of petition, 257
- unborn persons, contingent rights in, 245
- vendor, when a trustee, 246
- vesting orders of land, 243
  - when made by the Chancery Division, 243
    - in Lunacy, 243
  - what property may be vested, 247
    - copyholds and leaseholds, 247
    - easements, 247
    - powers, 247
    - property in the colonies, 248 ]
    - in Ireland, 248
  - rent charges, 247
- vesting orders of stock and choses in action, 248
  - when made by the Chancery Division, 249
    - in Lunacy, 248
  - form of order vesting stock, &c., 250
- what property may be vested under, 247, 248
- who may be appointed new trustees, 255
- who may present petition, 258
- form of petition under*, 353

## TRUSTEE RELIEF ACT, 34

- payment in, under, 34
  - petition, when necessary, 34
  - costs of, 41
- payment out, under, 35

TRUSTEE RELIEF ACT—*continued.*payment out, under—*continued.*

appeal from order for, 44

costs, 41-43

declarations, Court may make, on petition, 35

decide questions of construction, Court may, 35

direct inquiries, Court may, 35

evidence, 38

jurisdiction of Court on petition for, 35

service of petition, 38-41

title and contents of petition, 38

who may petition for, 37

*form of petition for*, 317

## TWO PETITIONS,

costs of, 14, 181

pre-audience, 7, 171, 272

UNCLAIMED STOCK. *See* NATIONAL DEBT ACT.

## UNDERTAKING,

to build, 67

to apply fund, 28

to support, 25

## UNSOUND MIND (PERSON OF),

petition by, 4

payment out, to, 25

service on, 6, 119

small properties of, application of, 287

## VACATION BUSINESS,

payment out of parliamentary deposit is, 53

VESTING ORDER. *See* TRUSTEE ACTS.WARD OF COURT. *See* MARRIAGE.

## WIDOW,

affidavit of no settlement by, 31

## WINDING-UP PETITIONS, 153-187

adjournment of petition, 179

advertisement of order, 180

advertisement of petition, 168

*form of*, 343

notice, is, to all the world, 171, 181

papers, in what, 169

priority of petitions determined by, 171

re-advertisement, when necessary, 170

seven days before hearing, must be, 169

title and form of, 168, 169

withdrawal of petition, of, 171



WINDING-UP PETITIONS—*continued*.

- affidavit in support of, 175
  - must be made by petitioner, 176
  - must be sworn and filed, when, 175
  - extending time for filing, 176
  - may be made by manager of company, 342, *n.*
  - form of, 342
- amendment of petition, 177, 178
- appeal from winding-up order, 186
  - costs of, 187
  - security for costs of, 187
  - time for, 186
  - who may appeal, 186
  - who will be heard on, 187
- assignment of debt and right to proceed with petition, 166
- bondholder, by, 166
- building society, 164
- carriage of order, 181, 182
- collusive petition, 181
- commencing business, company, not, 153
- compulsory order,
  - after a voluntary winding-up, 158, 162
  - after a supervision order, 159
  - cheaper than a supervision order, 160
- copies of petition, who entitled to be furnished with, 176
- costs of petition, 183
  - general rule as to, 183
  - exceptions to, 184
- appearance, of, 184
  - of provisional liquidator, 184
  - of secured creditor, 184
- appeal, of, 187
- second petition, of, 181, 185
- security for, 185, 187
- withdrawal of petition, on, 177, 185
- how paid, 183
- of petitioner are a first charge on the estate, 185
- creditors by, 155, 166
- creditor is entitled, *ex debito justitiæ*, 156
  - though debt secured, 166
  - though debt under £50, 166
  - debt must not be uncertain or disputed, 166
  - claim for unliquidated damages not sufficient, 166
  - statutory demand by, 155
- demurrer to, 178
  - amendment of demurrable petition, 178
  - costs of respondent's evidence, 178
  - shareholder's petition, to, 178
  - who opens case on, 178

WINDING-UP PETITIONS—*continued.*

- evidence on, 175
  - affidavit in support of petition, 175 ; *form of affidavit*, 342
  - fraud, of, 179
  - further evidence, 176
- fraud, allegation of, in, 178
- grounds for presenting petition, 153
  - "just and equitable," 157
  - not commencing, or suspending, business, 153
  - number of members, less than seven, 155
  - special resolution, 153
  - unable to pay debts, 155
- hearing of, 179
  - adjournment of, 179
  - orders, what may be made on, 179
  - standing over, 179
  - who may be heard, 180
    - on appeal, 186
- injunction to restrain presentation of, 156, n.
- insolvent, when a company is deemed to be, 155
- "just and equitable," 157
- notice of a prior petition, 181
- order, 180
  - advertisement of, within twelve days, 180
  - carriage of, 181, 182
  - copy of, to be left at chambers, 180
  - service of, 180
  - summons to proceed on, 181
- petition, who may, 166
  - assignee of debt, 166
  - B. contributory, 168
  - bondholder, 166
  - contributory, 167
  - creditor, 155, 156, 166
  - debenture holder, 167
  - executors, 168
  - scrip holder, 168
  - shareholder, paid up, 159, 167
    - in arrear, 167
    - de jure*, 168
  - share warrant, holder of, 168
- priority of petitions, determined by date of advertisement, 171
- provisional liquidator, not entitled to appear, 184
- rehearing of, 187
- second petition, 181
  - costs of, 181, 185
  - notice of, what is, 181
  - order on, 182
  - transfer of, 182

WINDING-UP PETITIONS—*continued*.

- security for costs, 185
  - of appeal, 187
- service of order, 180
- service of petition, 172
  - amalgamated company, on, 174
  - company's office, at, 172
    - where there is no office, 173
  - liquidator, on, 174
  - unregistered company, on, 174
- several petitions, 181
- shareholder, petition by, 159, 167, 178
- supervision order, 159, 182
- title of petition, 168
- transfer of second petition, 182
- unable to pay debts, when a company will be deemed, 155
- unopposed, when treated as, 179
- what companies may be wound up, 160
  - associations, 162
  - building society, 164
  - clubs, 164
  - cost-book mining companies, 163
  - dissolved companies, 162
  - foreign companies, 163
  - friendly society, 164, n.
  - illegal company, 161
  - inchoate company, 162
  - incorporated by special act, 161
    - for public purposes, 161, 167
  - industrial society, 164
  - life assurance company, 164
  - literary, scientific, or charitable society, 164
  - loan society, 164
  - mutual society, 164
  - partnership of more than seven persons, 162
  - railway companies, when, 161
  - registered under Joint Stock Companies Acts, companies, 160
  - scrip company, 163
  - unincorporated company, 161
  - unregistered company, 160, 161
- withdrawal of, 177, 178
- form of petition*, 341

WITNESS (EXAMINATION OF). *See De Bene Esse*.

WRIT (RETURN OF),  
petition to enforce, 314

THE END.

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## INDEX OF SUBJECTS.

|                                    | PAGE |                                  | PAGE |
|------------------------------------|------|----------------------------------|------|
| ADMINISTRATORS—                    |      | COMMON LAW—                      |      |
| Walker . . . . .                   | 6    | Indermaur . . . . .              | 24   |
| ADMIRALTY LAW—                     |      | COMMON PLEAS DIVISION, Practice  |      |
| Jones . . . . .                    | 14   | of—                              |      |
| Kay . . . . .                      | 17   | Griffith and Loveland . . . . .  | 6    |
| Smith . . . . .                    | 23   | Indermaur . . . . .              | 25   |
| AGRICULTURAL HOLDINGS—             |      | COMPANIES LAW—                   |      |
| Brown . . . . .                    | 26   | Brice . . . . .                  | 16   |
| ARTICLED CLERKS—                   |      | Buckley . . . . .                | 17   |
| See STUDENTS.                      |      | Reilly's Reports . . . . .       | 29   |
| ARTIZANS AND LABOURERS'            |      | Smith . . . . .                  | 39   |
| DWELLINGS—                         |      | Watts . . . . .                  | 47   |
| Lloyd . . . . .                    | 13   | See MAGISTERIAL LAW.             |      |
| ASSAULTS—                          |      | COMPENSATION—                    |      |
| See MAGISTERIAL LAW.               |      | Browne . . . . .                 | 19   |
| BALLOT ACT—                        |      | Lloyd . . . . .                  | 13   |
| Bushby . . . . .                   | 33   | COMPULSORY PURCHASE—             |      |
| BANKRUPTCY—                        |      | Browne . . . . .                 | 19   |
| Baldwin . . . . .                  | 15   | CONSTABLES—                      |      |
| Ringwood . . . . .                 | 15   | See POLICE GUIDE.                |      |
| Roche and Hazlitt . . . . .        | 9    | CONSTITUTIONAL LAW AND           |      |
| BAR EXAMINATION JOURNAL            | 39   | HISTORY—                         |      |
| BIBLIOGRAPHY . . . . .             | 40   | Forsyth . . . . .                | 14   |
| BILLS OF LADING—                   |      | Taswell-Langmead . . . . .       | 21   |
| Kay . . . . .                      | 17   | Thomas . . . . .                 | 28   |
| BILLS OF SALE—                     |      | CONTRACTS—                       |      |
| Baldwin . . . . .                  | 15   | Kay . . . . .                    | 17   |
| Ringwood . . . . .                 | 15   | CONVEYANCING, Practice of—       |      |
| Roche and Hazlitt . . . . .        | 9    | Copinger (Title Deeds) . . . . . | 45   |
| BIRTHS AND DEATHS REGIS-           |      | CONVEYANCING, Precedents in—     |      |
| TRATION—                           |      | Copinger's Index to . . . . .    | 40   |
| Flaxman . . . . .                  | 43   | CONVEYANCING, Principles of—     |      |
| CAPACITY—                          |      | Deane . . . . .                  | 23   |
| See PRIVATE INTERNATIONAL          |      | COPYRIGHT—                       |      |
| LAW.                               |      | Copinger . . . . .               | 45   |
| CAPITAL PUNISHMENT—                |      | CORPORATIONS—                    |      |
| Copinger . . . . .                 | 42   | Brice . . . . .                  | 16   |
| CARRIERS—                          |      | Browne . . . . .                 | 19   |
| See RAILWAY LAW.                   |      | COSTS, Crown Office—             |      |
| „ SHIPMASTERS.                     |      | Short . . . . .                  | 8    |
| CHANCERY DIVISION, Practice of—    |      | COVENANTS FOR TITLE—             |      |
| Brown's Edition of Snell . . . . . | 22   | Copinger . . . . .               | 45   |
| Griffith and Loveland . . . . .    | 6    | CREW OF A SHIP—                  |      |
| Indermaur . . . . .                | 25   | Kay . . . . .                    | 17   |
| Williams . . . . .                 | 7    | CRIMINAL LAW—                    |      |
| And See EQUITY.                    |      | Copinger . . . . .               | 42   |
| CHARITABLE TRUSTS—                 |      | Harris . . . . .                 | 27   |
| Cooke . . . . .                    | 10   | See MAGISTERIAL LAW.             |      |
| Whiteford . . . . .                | 20   | CROWN LAW—                       |      |
| CHURCH AND CLERGY—                 |      | Forsyth . . . . .                | 14   |
| Brice . . . . .                    | 8    | Hall . . . . .                   | 30   |
| CIVIL LAW—                         |      | Kelyng . . . . .                 | 35   |
| See ROMAN LAW.                     |      | Taswell-Langmead . . . . .       | 21   |
| CODES—Argles . . . . .             | 32   | Thomas . . . . .                 | 28   |
| COLLISIONS AT SEA—Kay . . . . .    | 17   | CROWN PRACTICE—                  |      |
| COLONIAL LAW—                      |      | Cornor . . . . .                 | 10   |
| Cape Colony . . . . .              | 38   | CUSTOM AND USAGE—                |      |
| Forsyth . . . . .                  | 14   | Browne . . . . .                 | 19   |
| New Zealand Jurist . . . . .       | 18   | Mayne . . . . .                  | 38   |
| New Zealand Statutes . . . . .     | 18   |                                  |      |

INDEX OF SUBJECTS—*continued.*

| CUSTOMS—                           | PAGE      | GAIUS INSTITUTES—                  | PAGE      |
|------------------------------------|-----------|------------------------------------|-----------|
| See MAGISTERIAL LAW.               |           | Harris . . . . .                   | 20        |
| DAMAGES—                           |           | GAME LAWS—                         |           |
| Mayne . . . . .                    | 31        | Locke . . . . .                    | 32        |
| DECREES AND ORDERS—                |           | See MAGISTERIAL LAW.               |           |
| Pemberton . . . . .                | 41        | HACKNEY CARRIAGES—                 |           |
| DICTIONARIES—                      |           | See MAGISTERIAL LAW.               |           |
| Brown . . . . .                    | 26        | HINDU LAW—                         |           |
| DIGESTS—                           |           | Coghlan . . . . .                  | 28        |
| Law Magazine Quarterly Digest .    | 37        | Cunningham . . . . .               | 38 and 42 |
| Indian Jurist . . . . .            | 38        | Mayne . . . . .                    | 38        |
| Menzies' Digest of Cape Reports .  | 38        | Michell . . . . .                  | 44        |
| DISCOVERY AND INTERROGA-           |           | HISTORY—                           |           |
| TORIES—                            |           | Braithwaite . . . . .              | 41        |
| Griffith and Loveland's Edition of |           | Taswell-Langmead . . . . .         | 21        |
| the Judicature Acts . . . . .      | 6         | HYPOTHECATION—                     |           |
| DIVORCE—Harrison . . . . .         | 23        | Kay . . . . .                      | 17        |
| DOMICIL—                           |           | INDEX TO PRECEDENTS—               |           |
| See PRIVATE INTERNATIONAL          |           | Copinger . . . . .                 | 40        |
| LAW.                               |           | INDIA—                             |           |
| DUTCH LAW . . . . .                | 38        | See HINDU LAW.                     |           |
| ECCLESIASTICAL LAW—                |           | INFANTS—                           |           |
| Brice . . . . .                    | 8         | Simpson . . . . .                  | 43        |
| Smith . . . . .                    | 23        | INJUNCTIONS—                       |           |
| EDUCATION ACTS—                    |           | Joyce . . . . .                    | 11        |
| See MAGISTERIAL LAW.               |           | INSTITUTE OF THE LAW—              |           |
| ELECTION LAW & PETITIONS—          |           | Brown's Law Dictionary . . . . .   | 26        |
| Bushby . . . . .                   | 33        | INTERNATIONAL LAW—                 |           |
| Hardcastle . . . . .               | 33        | Clarke . . . . .                   | 44        |
| O'Malley and Hardcastle . . . . .  | 33        | Foote . . . . .                    | 36        |
| EQUITY—                            |           | Law Magazine . . . . .             | 37        |
| Choyce Cases . . . . .             | 35        | INTERROGATORIES AND DIS-           |           |
| Pemberton . . . . .                | 32 and 41 | COVERY—                            |           |
| Snell . . . . .                    | 22        | Griffith and Loveland's Edition of |           |
| Williams . . . . .                 | 7         | the Judicature Acts . . . . .      | 6         |
| EVIDENCE—                          |           | INTOXICATING LIQUORS—              |           |
| See USAGES AND CUSTOMS.            |           | See MAGISTERIAL LAW.               |           |
| EXAMINATION OF STUDENTS—           |           | JOINT STOCK COMPANIES—             |           |
| Bar Examination Journal . . . . .  | 39        | See COMPANIES.                     |           |
| Indermaur . . . . .                | 24 and 25 | JUDGMENTS AND ORDERS—              |           |
| EXECUTORS—                         |           | Pemberton . . . . .                | 41        |
| Walker . . . . .                   | 6         | JUDICATURE ACTS—                   |           |
| EXCHEQUER DIVISION, Practice of—   |           | Cunningham and Mattinson . . . . . | 7         |
| Griffith and Loveland . . . . .    | 6         | Griffith . . . . .                 | 6         |
| Indermaur . . . . .                | 25        | Indermaur . . . . .                | 25        |
| EXTRADITION—                       |           | Kelke . . . . .                    | 6         |
| Clarke . . . . .                   | 44        | JURISPRUDENCE—Forsyth . . . . .    | 14        |
| See MAGISTERIAL LAW.               |           | JUSTINIAN'S INSTITUTES—            |           |
| FACTORIES—                         |           | Campbell . . . . .                 | 47        |
| See MAGISTERIAL LAW.               |           | Harris . . . . .                   | 20        |
| FISHERIES—                         |           | LANDS CLAUSES CONSOLIDA-           |           |
| See MAGISTERIAL LAW.               |           | TION ACT—                          |           |
| FIXTURES—                          |           | Lloyd . . . . .                    | 13        |
| Brown . . . . .                    | 26        | LARGENY—                           |           |
| FOREIGN LAW—                       |           | See MAGISTERIAL LAW                |           |
| Argles . . . . .                   | 32        | LAW DICTIONARY—                    |           |
| Dutch Law . . . . .                | 38        | Brown . . . . .                    | 26        |
| Foote . . . . .                    | 36        | LAW MAGAZINE & REVIEW .            | 37        |
| Harris . . . . .                   | 47        | LEADING CASES—                     |           |
| FORGERY—                           |           | Common Law . . . . .               | 25        |
| See MAGISTERIAL LAW.               |           | Constitutional Law . . . . .       | 28        |
| FRAUDULENT CONVEYANCES—            |           | Equity and Conveyancing . . . . .  | 25        |
| May . . . . .                      | 26        | Hindu Law . . . . .                | 20        |

INDEX OF SUBJECTS—*continued.*

|                                        | PAGE |                                       | PAGE         |
|----------------------------------------|------|---------------------------------------|--------------|
| LEADING STATUTES—                      |      | PARLIAMENT—                           |              |
| Thomas . . . . .                       | 28   | Taswell-Langmead . . . . .            | 21           |
| LEASES—                                |      | Thomas . . . . .                      | 28           |
| Copinger . . . . .                     | 45   | PARLIAMENTARY PRACTICE—               |              |
| LEGACY AND SUCCESSION—                 |      | Browne . . . . .                      | 19           |
| Hanson . . . . .                       | 10   | Smethurst . . . . .                   | 18           |
| LEGITIMACY AND MARRIAGE—               |      | PARTITION—                            |              |
| See PRIVATE INTERNATIONAL LAW.         |      | Walker . . . . .                      | 43           |
| LICENSES—                              |      | PASSENGERS—                           |              |
| See MAGISTERIAL LAW.                   |      | See MAGISTERIAL LAW.                  |              |
| LIFE ASSURANCE—                        |      | „ RAILWAY LAW.                        |              |
| Buckley . . . . .                      | 29   | PASSENGERS AT SEA—                    |              |
| Reilly . . . . .                       | 29   | Kay . . . . .                         | 17           |
| LIMITATION OF ACTIONS—                 |      | PATENT CASES—                         |              |
| Banning . . . . .                      | 42   | Higgins . . . . .                     | 12           |
| LIQUIDATION with CREDITORS—            |      | PAWNBROKERS—                          |              |
| Baldwin . . . . .                      | 15   | See MAGISTERIAL LAW.                  |              |
| Ringwood . . . . .                     | 15   | PERSONATION AND IDENTITY—             |              |
| Roche and Hazlit . . . . .             | 9    | Moriarty . . . . .                    | 14           |
| And see BANKRUPTCY.                    |      | PETITIONS IN CHANCERY AND LUNACY—     |              |
| LLOYD'S BONDS . . . . .                | 14   | Williams . . . . .                    | 7            |
| LUNACY—                                |      | PILOTS—                               |              |
| Williams . . . . .                     | 7    | Kay . . . . .                         | 17           |
| MAGISTERIAL LAW—                       |      | POLICE GUIDE—                         |              |
| Greenwood and Martin . . . . .         | 46   | Greenwood and Martin . . . . .        | 46           |
| MALICIOUS INJURIES—                    |      | POLLUTION OF RIVERS—                  |              |
| See MAGISTERIAL LAW.                   |      | Higgins . . . . .                     | 30           |
| MARRIAGE and LEGITIMACY—               |      | PRACTICE BOOKS—                       |              |
| Foote . . . . .                        | 36   | Bankruptcy . . . . .                  | 9 and 15     |
| MARRIED WOMEN'S PROPERTY ACTS—         |      | Companies Law . . . . .               | 29 and 39    |
| Walker's Edition of Griffith . . . . . | 40   | Compensation . . . . .                | 13           |
| MASTER and SERVANT—                    |      | Compulsory Purchase . . . . .         | 19           |
| See SHIPMASTERS & SEAMEN.              |      | Conveyancing . . . . .                | 45           |
| MASTERS and SERVANTS—                  |      | Damages . . . . .                     | 31           |
| See MAGISTERIAL LAW.                   |      | Ecclesiastical Law . . . . .          | 8            |
| MERCANTILE LAW . . . . .               | 32   | Election Petitions . . . . .          | 33           |
| See SHIPMASTERS & SEAMEN.              |      | Equity . . . . .                      | 7, 22 and 32 |
| „ STOPPAGE IN TRANSITU.                |      | High Court of Justice . . . . .       | 6 and 25     |
| MERCHANDISE MARKS—                     |      | Injunctions . . . . .                 | 11           |
| Daniel . . . . .                       | 42   | Judicature Acts . . . . .             | 6 and 25     |
| MINES—                                 |      | Magisterial . . . . .                 | 46           |
| Harris . . . . .                       | 47   | Pleading, Precedents of . . . . .     | 7            |
| See MAGISTERIAL LAW.                   |      | Privy Council . . . . .               | 44           |
| MORTMAIN—                              |      | Railways . . . . .                    | 14           |
| See CHARITABLE TRUSTS.                 |      | Railway Commission . . . . .          | 19           |
| NATIONALITY—                           |      | Rating . . . . .                      | 19           |
| See PRIVATE INTERNATIONAL LAW.         |      | Supreme Court of Judicature . . . . . | 6 and 25     |
| NEGLIGENCE—                            |      | PRECEDENTS OF PLEADING—               |              |
| Campbell . . . . .                     | 40   | Cunningham and Mattinson . . . . .    | 7            |
| NEW ZEALAND—                           |      | PRIMOGENITURE—                        |              |
| Jurist Journal and Reports . . . . .   | 18   | Lloyd . . . . .                       | 15           |
| Statutes . . . . .                     | 18   | PRINCIPLES—                           |              |
| OBLIGATIONS—                           |      | Brice (Corporations) . . . . .        | 16           |
| Brown's Savigny . . . . .              | 20   | Browne (Rating) . . . . .             | 19           |
|                                        |      | Deane (Conveyancing) . . . . .        | 23           |
|                                        |      | Harris (Criminal Law) . . . . .       | 27           |
|                                        |      | Houston (Mercantile) . . . . .        | 32           |
|                                        |      | Indermaur (Common Law) . . . . .      | 24           |
|                                        |      | Joyce (Injunctions) . . . . .         | 11           |
|                                        |      | Ringwood (Bankruptcy) . . . . .       | 15           |
|                                        |      | Snell (Equity) . . . . .              | 22           |



INDEX OF SUBJECTS—*continued.*

|                                        | PAGE |                                    | PAGE      |
|----------------------------------------|------|------------------------------------|-----------|
| PRIORITY—                              |      | SANITARY ACTS—                     |           |
| Robinson . . . . .                     | 32   | See MAGISTERIAL LAW.               |           |
| PRIVATE INTERNATIONAL                  |      | SCOTLAND, LAWS OF—                 |           |
| LAW—                                   |      | Robertson . . . . .                | 41        |
| Footc . . . . .                        | 36   | SEA SHORE—                         |           |
| PRIVY COUNCIL—                         |      | Hall . . . . .                     | 30        |
| Michell . . . . .                      | 44   | SHIPMASTERS AND SEAMEN—            |           |
| PROBATE—                               |      | Kay . . . . .                      | 17        |
| Hanson . . . . .                       | 10   | SOCIETIES—                         |           |
| Harrison . . . . .                     | 23   | See CORPORATIONS.                  |           |
| PROMOTERS—                             |      | STAGE CARRIAGES—                   |           |
| Watts . . . . .                        | 47   | See MAGISTERIAL LAW.               |           |
| PUBLIC WORSHIP—                        |      | STAMP DUTIES—                      |           |
| Brice . . . . .                        | 8    | Copinger . . . . .                 | 40 and 45 |
| QUEEN'S BENCH DIVISION, Practice       |      | STATUTE OF LIMITATIONS—            |           |
| of—                                    |      | Banning . . . . .                  | 42        |
| Griffith and Loveland . . . . .        | 6    | STATUTES—                          |           |
| Indermaur . . . . .                    | 25   | Hardcastle . . . . .               | 9         |
| QUESTIONS FOR STUDENTS—                |      | New Zealand . . . . .              | 18        |
| Indermaur . . . . .                    | 25   | Thomas . . . . .                   | 28        |
| Bar Examination Journal . . . . .      | 39   | STOPPAGE IN TRANSITU—              |           |
| RAILWAYS—                              |      | Houston . . . . .                  | 32        |
| Browne . . . . .                       | 19   | Kay . . . . .                      | 17        |
| Godefroi and Shortt . . . . .          | 14   | STUDENTS' BOOKS . 20—28, 39, 47    |           |
| Goodeve . . . . .                      | 29   | SUCCESSION DUTIES—                 |           |
| Lloyd . . . . .                        | 13   | Hanson . . . . .                   | 10        |
| See MAGISTERIAL LAW.                   |      | SUCCESSION LAWS—                   |           |
| RATING—                                |      | Lloyd . . . . .                    | 13        |
| Browne . . . . .                       | 19   | SUPREME COURT OF JUDICA-           |           |
| REAL PROPERTY—                         |      | TURE, Practice of—                 |           |
| Deane . . . . .                        | 23   | Cunningham and Mattinson . . . . . | 7         |
| REFEREES COURT—                        |      | Griffith and Loveland . . . . .    | 6         |
| Smethurst . . . . .                    | 18   | Indermaur . . . . .                | 25        |
| REGISTRATION OF BIRTHS                 |      | TELEGRAPHS—                        |           |
| AND DEATHS—                            |      | See MAGISTERIAL LAW.               |           |
| Flaxman . . . . .                      | 43   | TITLE DEEDS—                       |           |
| REMINISCENCE—                          |      | Copinger . . . . .                 | 45        |
| Braithwaite . . . . .                  | 41   | TOWNS IMPROVEMENTS—                |           |
| REPORTS—                               |      | See MAGISTERIAL LAW.               |           |
| Bellewe . . . . .                      | 34   | TRADE MARKS—                       |           |
| Brooke . . . . .                       | 35   | Daniel . . . . .                   | 42        |
| Choyce Cases . . . . .                 | 35   | TREASON—                           |           |
| Cooke . . . . .                        | 35   | Kelyng . . . . .                   | 35        |
| Cunningham . . . . .                   | 34   | Taswell-Langmead . . . . .         | 21        |
| Election Petitions . . . . .           | 33   | TRIALS—                            |           |
| Finlason . . . . .                     | 32   | Queen v. Gurney . . . . .          | 32        |
| Gibbs, Case of Lord Henry Sey-         |      | ULTRA VIRES—                       |           |
| mour's Will . . . . .                  | 10   | Brice . . . . .                    | 16        |
| Kelyng, John . . . . .                 | 35   | USAGES AND CUSTOMS—                |           |
| Kelyng, William . . . . .              | 35   | Browne . . . . .                   | 19        |
| New Zealand Jurist . . . . .           | 18   | Mayne . . . . .                    | 38        |
| Reilly . . . . .                       | 29   | VOLUNTARY CONVEYANCES—             |           |
| Shower (Cases in Parliament) . . . . . | 34   | May . . . . .                      | 29        |
| RITUAL—                                |      | WATER COURSES—                     |           |
| Brice . . . . .                        | 8    | Higgins . . . . .                  | 30        |
| ROMAN LAW—                             |      | WILLS, CONSTRUCTION OF—            |           |
| Brown's Analysis of Savigny . . . . .  | 20   | Gibbs, Report of Wallace v.        |           |
| Campbell . . . . .                     | 47   | Attorney-General . . . . .         | 10        |
| Harris . . . . .                       | 20   |                                    |           |
| SALVAGE—                               |      |                                    |           |
| Jones . . . . .                        | 14   |                                    |           |
| Kay . . . . .                          | 17   |                                    |           |

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# INDEX to the NAMES of AUTHORS and EDITORS of WORKS enumerated in this Catalogue.

- ARGLES (N.), page 32.  
 BALDWIN (E. T.), 15.  
 BANNING (H. T.), 42.  
 BARTON (G. B.), 18.  
 BELLEWE (R.), 34.  
 BRAITHWAITE (T. W.), 41.  
 BRICE (SEWARD), 8, 16.  
 BROOKE (SIR R.), 35.  
 BROWN (ARCHIBALD), 20, 22, 26.  
 BROWNE (J. H. BALFOUR), 19.  
 BUCHANAN, (J.), 38.  
 BUCKLEY (H. B.), 17.  
 BUCKNILL (T. T.), 34, 35.  
 BUSHEY (H. J.), 33.  
 CAMPBELL (GORDON), 47.  
 CAMPBELL (ROBERT), 40.  
 CLARKE (EDWARD), 44.  
 COGHLAN (W. M.), 28.  
 COOKE (SIR G.), 35.  
 COOKE (HUGH), 10.  
 COPINGER (W. A.), 40, 42, 45.  
 CORNER (R. J.), 10.  
 CUNNINGHAM (H. S.), 38, 42.  
 CUNNINGHAM (JOHN), 7.  
 CUNNINGHAM (T.), 34.  
 DANIEL (E. M.), 42.  
 DEANE (H. C.), 23.  
 DE WAL (J.), 38.  
 EDWARDS (W. D.), 39.  
 EVANS (G.), 32.  
 FINLASON (W. F.), 32.  
 FLAXMAN (A. J.), 43.  
 FOOTE (J. ALDERSON), 36.  
 FORSYTH (W.), 14.  
 GIBBS (F. W.), 10.  
 GODEFROI (H.), 14.  
 GOODEVE (L. A.), 29.  
 GREENWOOD (H. C.), 46.  
 GRIFFIN (E. F.), 38.  
 GRIFFITH (J. R.), 40.  
 GRIFFITH (W. DOWNES), 6.  
 GROTIUS (HUGO), 38.  
 HALL (R. G.), 30.  
 HANSON (A.), 10.  
 HARDCASTLE (H.), 9, 33.  
 HARRIS (SEYMOUR F.), 20, 27.  
 HARRIS (W. A.), 47.  
 HARRISON (J. C.), 23.  
 HARWOOD (R. G.), 10.  
 HAZLITT (W.), 9.  
 HIGGINS (C.), page 12, 30.  
 HOUSTON (J.), 32.  
 INDERMAUR (JOHN), 24, 25.  
 JONES (E.), 14.  
 JOYCE (W.), 11.  
 KAY (JOSEPH), 17.  
 KELKE (W. H.), 6.  
 KELYNG (SIR J.), 35.  
 KELYNGE (W.), 35.  
 LLOYD (EYRE), 13.  
 LOCKE (J.), 32.  
 LORENZ (C. A.), 38.  
 LOVELAND (R. L.), 6, 10, 30, 34, 35.  
 MAASDORP (A. F. S.), 38.  
 MARCH (JOHN), 35.  
 MARSH (THOMAS), 21.  
 MARTIN (TEMPLE C.), 46.  
 MATTINSON (M. W.), 7.  
 MAY (H. W.), 29.  
 MAYNE (JOHN D.), 31, 38.  
 MENZIES (W.), 38.  
 MICHELL (E. B.), 44.  
 MORIARTY, 14.  
 O'MALLEY (E. L.), 33.  
 PEMBERTON (L. L.), 32, 41.  
 REILLY (F. S.), 29.  
 RINGWOOD (R.), 15.  
 ROBERTSON (A.), 41.  
 ROBINSON (W. G.), 32.  
 ROCHE (H. P.), 9.  
 SAVIGNY (F. C. VON), 20.  
 SHORT (F. H.), 8, 10.  
 SHORTT (JOHN), 14.  
 SHOWER (SIR B.), 34.  
 SIMPSON (A. H.), 43.  
 SMETHURST (J. M.), 18.  
 SMITH (EUSTACE), 23, 39.  
 SMITH (LUMLEY), 31.  
 SNELL (E. H. T.), 22.  
 TARRANT (H. J.), 14.  
 TASWELL-LANGMEAD, 21.  
 THOMAS (ERNEST C.), 28.  
 TYSEN (A. D.), 39.  
 VAN DER KESSEL (D. G.), 38.  
 WALKER (W. G.), 6, 40, 43.  
 WATTS (C. N.), 47.  
 WHITEFORD (F. M.), 20.  
 WILLIAMS (S. E.), 7.





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